

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

23 Civ. 6188 (ER)

IQVIA HOLDINGS, INC. and
PROPEL MEDIA, INC.,

Defendants.

Trial

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New York, N.Y.
November 29, 2023
9:00 a.m.

Before:

HON. EDGARDO RAMOS,

District Judge

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(Trial resumed)

1 THE COURT: We will now proceed with the
2 cross-examination of Dr. Hatzitaskos. It is reminded that you
3 are still under oath.

4 KOSTIS HATZITASKOS, resumed.

5 CROSS-EXAMINATION

6 BY MR. TULUMELLO:

7 Q. Dr. Hatzitaskos, yesterday you testified that this market
8 was mature, is that right?

9 A. I don't recall the exact words. I think it's definitely
10 mature enough to apply economic tools.

11 Q. And in your report you repeatedly say the market is stable,
12 correct? It's in many places in your report.

13 A. Yes. I think there are a variety of ways in which if you
14 look at how things are changing or not changing year after
15 year, things are not fundamentally changing every other year.

16 Q. We can see here on the demonstrative animating your screen
17 all kinds of statements in the report. We can go to the
18 pullout of all of them. The HCP programmatic advertisement is
19 more stable than rapidly evolving. The industry has been
20 fairly stable all time. Over time HCP programmatic revenues
21 are fairly stable year to year. HCP programmatic is stable,
22 relatively stable.

23 Those are all your opinions expressed in your report,
24 is that right?

25 A. That's right.

1 Q. Let's go back 36 months ago. Then we will pull up DX-1924.

2 I will wait for you to get to the exhibit. But you've
3 been here the whole trial, correct?

4 A. Yes.

5 Q. And you've observed the testimony of all the witnesses?

6 A. I think so.

7 Q. Do you remember what we showed this document from WebMD
8 which is dated November of 2020. Do you recall seeing that?

9 A. I mean, I don't recall every single document, but I vaguely
10 recall -- you've shown some things about WebMD.

11 Q. It didn't jump out at you or make an impression, this
12 particular document?

13 A. You were probably jumping in and out of it, so -- it's a
14 long document. We certainly didn't go through the whole thing.

15 Q. Fair enough. Let go to slide 10, please. Here it says:
16 HCP programmatic opportunity. We start with HCPs, while
17 Medscape has increased share against endemic print and digital,
18 programmatic buying has begun to take share, mostly in the last
19 1.5 years.

20 Do you see that?

21 A. I see it.

22 Q. And so Medscape is saying in November of 2020 that
23 programmatic is starting to take share from it, right?

24 A. That's what it says.

25 Q. And if you just do some math, 1.5 years before November

1 2020 puts you sometime around May of 2019, correct?

2 A. Sorry. I'm not following.

3 Q. If this deck is produced in November 2020 and WebMD is
4 saying we started to lose programmatic in the last year and a
5 half, they were talking about the period from approximately May
6 of 2019 to November 2020.

7 A. OK.

8 Q. Now let's go to slide 11.

9 A. Yes.

10 Q. Do you see a list here of programmatic competitors?

11 A. I do.

12 Q. And do you recall at the time that Medscape was
13 contemplating an acquisition of PulsePoint? Do you recall
14 that, that this deck is looking at an acquisition of
15 PulsePoint?

16 A. I do not recall that exact name.

17 Q. You don't recall.

18 And this is the November 2020 analysis from WebMD
19 Medscape of the programmatic market in November of 2020.

20 Do you see that?

21 A. This is their analysis. I am not sure what it is based on,
22 what their sources are. They probably didn't have subpoena
23 power to put these numbers together.

24 Q. I see. Is this ordinary course -- this is an ordinary
25 course document?

1 A. It is.

2 Q. Is it qualitative evidence?

3 A. It's somewhere between qualitative and quantitative.

4 Q. So it's qualitative plus.

5 A. It's their attempt at coming up with some specific numbers,
6 yes.

7 Q. In order to evaluate a possible acquisition, right?

8 A. It seems like it.

9 Q. Where is Lasso on this chart?

10 A. Lasso is presumably within the all other.

11 Q. You say presumably, but do you know if Lasso is part of the
12 other?

13 A. I do not have access to the underlying data here, so I do
14 not know how they came up with these numbers.

15 Q. This is a deck evaluating the programmatic competitive
16 space in November of 2020. What were Lasso's revenues in 2019?

17 A. Well, I think we heard from Mr. Field that he himself
18 already had some clients but that Lasso itself was incorporated
19 in December 2019, so I'm not really sure.

20 Q. You are not sure. And in fact you did not even know when
21 Lasso entered the market when you were deposed less than a
22 month ago, is that right?

23 A. As we heard in Mr. Field's testimony and cross-examination,
24 it is relatively unclear and complicated. They certainly
25 didn't start in 2019 or 2020 from a standstill.

1 Q. When Lasso entered -- you say it's complicated. It's 2019
2 or 2020, but that's your opinion now. I want to show you your
3 answer to that question in your deposition.

4 MR. TULUMELLO: If we could go to trial transcript
5 214, lines 17 through 23.

6 (Video played)

7 Q. So that is November 8 of 2023 and you did not know what
8 year Lasso entered, right?

9 A. I think as I explained in my deposition.

10 Q. I just asked you, you didn't know, right?

11 A. I said that it's complicated.

12 Q. So Lasso's revenues in 2019, you are not sure. What were
13 Lasso's revenues in 2020?

14 A. I believe they were something like 6 million.

15 Q. How about 2021?

16 A. I do not recall that number. I think -- yeah. I do not
17 recall the exact number.

18 Q. So you have no idea how much revenue Lasso made in 2021,
19 right?

20 A. As I sit here today, I do not recall the exact number.

21 Q. Now, based on your testimony that the market is stable,
22 wouldn't we expect the Lasso revenue to be very close in 2020
23 in '21 to what it is today?

24 A. What we see in my slide 4, in my various revenues, is that
25 the big three are essentially in various ways special, right.

1 They manage to do something that the other competitors just
2 haven't managed to do. That means that just because Lasso
3 managed to grow doesn't mean that everybody else is going to
4 manage to grow.

5 Q. Understood.

6 MR. TULUMELLO: Let's go back to the WebMD document.

7 Q. Now, if we did the same analysis that you do and we just
8 took the revenue in 2020 here and we projected out market
9 shares, would we have an accurate picture of today's market?

10 A. I mean, with the exception of DeepIntent and Lasso growing,
11 yes. Proclivity would be a large player. PulsePoint would be
12 a large player, Medicx has actually lost revenue. Some of the
13 others are roughly there, so --

14 Q. Just so I understand your testimony, this 2020 analysis is
15 reflective of your view of the market today?

16 A. So, again, this is not my analysis, right. This is a
17 document you've pulled from a third party that didn't have
18 subpoena power, and so on and so forth. So I don't know where
19 these numbers are coming from.

20 But what you asked me and what I'm telling you is
21 that, yes, there are elements here in this chart where, with
22 the exception of DeepIntent and Lasso, again being somewhat
23 special in managing to grow, a bunch of these players are still
24 in the market.

25 Q. Let me ask you, is it your view that the market was stable

1 at this period in time, November 2020?

2 A. I haven't studied the market in that level of detail
3 earlier.

4 Q. Was the market stable in 2021?

5 A. What I have done an analysis on is that the market seems to
6 be stable in the period that is most recent and that we have
7 the best available data for, which is 2022 and 2023.

8 Q. So you looked at six quarters of data, January 2022 through
9 the first two quarters of 2023, right?

10 A. I looked at evidence in the record throughout the entire
11 time period.

12 Q. Your exhibit with all the market shares looks at six
13 quarters, right?

14 A. It does.

15 Q. Thank you.

16 And would you say that an industry is stable that
17 essentially started in 2019?

18 A. I think we have heard from multiple witnesses that some of
19 them were around in 2015 and 2017, so I'm not sure that that's
20 an accurate characterization.

21 Q. Why don't I just ask you to assume that the market started
22 to be material, started to exist in 2019, this market.

23 A. I am not sure how I'm supposed to assume that.

24 Q. I know you want to fight the assumption, but I'm just
25 asking you to assume with me for at a moment that the market

1 basically didn't really exist before 2019. If that were the
2 case, would you say that sitting here, in 2023, we can call the
3 market relatively stable and not dynamic?

4 A. Yes. If we examine the evidence from a recent time period
5 and we see that things are relatively stable over time,
6 antitrust tools are flexible, and we deal with changing
7 industries all the time. The analysis I have done shows that
8 if you compared 2022 to 2023, if you looked at Lasso and
9 DeepIntent calling each other out as their primary competitors
10 and so on, it's pretty stable.

11 Q. It's pretty stable, all right. I think we have got your
12 opinion on that.

13 Were you here in court when the Veeva witness
14 testified that the industry is dynamic? Do you recall that
15 testimony?

16 A. There are many industries that people sometimes call
17 dynamic. I mean, industries are dynamic in the sense that
18 we've heard, for example, about innovation that keeps
19 happening. So industries don't stand still. But that doesn't
20 mean that we can't do antitrust analysis on them.

21 Q. I'm sorry. I think I just asked you, were you here when
22 the Veeva witness testified that the market was dynamic?

23 A. Yes. And I explained what I --

24 Q. I'm sorry. I think I just asked you if you were here when
25 the Veeva witness testified that the market was dynamic.

1 A. I was.

2 Q. Thank you.

3 Do you believe -- you disagree with that statement?

4 A. To the extent that you are trying to use the
5 characterization dynamic to say that we should just put our
6 hands up and not be able to do any antitrust analysis, I do
7 disagree, yes.

8 Q. I'm certainly not saying that.

9 MR. TULUMELLO: Why don't we look at what the market
10 leader has said about the state of this market. This is
11 PulsePoint transcript 182-24 to 183-22.

12 (Video played)

13 Q. Does that sound like a relatively stable market to you?

14 A. So it sounds like a growing market. That doesn't mean that
15 it's not a relatively stable market. Every market is growing
16 quite a lot, and that doesn't mean that -- in my slide 6 I
17 believe we looked at the share of revenues from 2022 to 2023.
18 Just because the market is growing doesn't mean that the
19 biggest players aren't the same year to year.

20 Q. You also testified yesterday that historical shares are the
21 best predictor of the future, right?

22 A. Yes. In general, that's how economists analyze things.
23 That's in the merger guidelines.

24 Q. If we can look at DX-78, slide 10.

25 A. I'm sorry. Which one.

1 Q. Defense Exhibit 78, slide 10. We will also put it up on
2 the screen.

3 A. That's my reply report?

4 Q. This is page 233 of your reply report. You see:

5 Historical revenues are typically the best available predictor
6 of future competitive significance.

7 That's what you said?

8 A. Yes.

9 Q. Would that be true of the market as you define it in 2019?

10 A. So, again, I haven't studied -- we didn't have data for
11 revenues for everybody in 2019.

12 Q. Doctor, you can just say I don't know. I didn't study it.

13 Would this have been true? Historical revenues been
14 the best predictor of future competitive significance in 2020.
15 You didn't study that, did you?

16 A. We didn't have data back then.

17 Q. Would historical revenues be the best future predictor of
18 competitive significance in 2021? You didn't study that
19 either, did you?

20 A. So if you go back one page to page 82 of my reply report,
21 as the title to section 5.3.1 says, recent realized revenues
22 are generally the best predictor of future revenues. That's
23 what I did. I looked at all the available data which were
24 generally for 2022 and 2023.

25 Q. Understood. But I asked you if you analyzed whether the

1 revenues in 2021 were the best available predictor of future
2 competitive significance in 2022, and you did not, right?

3 A. I did not have comprehensive revenues in 2021.

4 Q. Thank you.

5 Now I want to talk a little bit about what you call
6 the competitive fringe. Your testimony yesterday was that
7 there are these the big three and all of these folks in the
8 fringe, correct?

9 A. Correct.

10 Q. Let me just ask, what does it mean to be -- a few questions
11 about what it means to be a fringe competitor. Can fringe
12 competitors grow their business, yes or no?

13 A. They can.

14 Q. Can fringe competitors scale their business, yes or no?

15 A. In theory, they can, but most of them don't. That's the
16 whole point of being fringe.

17 Q. In theory they can. Why don't we then go in practice. You
18 heard that one single customer, CMI, accounts for 50 percent of
19 Lasso's revenue, right?

20 A. Um-hum.

21 Q. You understand that to be true?

22 A. I believe so, roughly.

23 Q. And if CMI decided this year or next year to move its
24 business from Lasso to AdTheorent, what effect would that have
25 on your analysis of whether AdTheorent is fringe?

1 A. So if it's doing a lot of work there, CMI is choosing them
2 for a reason. If any of the other participants of the fringe
3 had the same capabilities, they would go to them. In fact,
4 there is one particular that I discuss in my reply report that
5 Dr. Israel mentioned that they must be an important competitor
6 because CMI actually uses them. But in fact when you look at
7 the revenues, CMI spends 450 times more, less with them than
8 they do with the merging parties.

9 Q. Respectfully, I'm not following what you are saying because
10 my question was what happens to AdTheorent if it wins that CMI
11 business.

12 A. If hypothetically it could win that business, it would
13 become bigger, but there is no evidence that they have the
14 capabilities to win that business.

15 Q. We saw the AdTheorent witness yesterday. Do you think if
16 CMI said to AdTheorent, we are going to -- we are considering
17 moving our business over to you, do you think that AdTheorent's
18 CEO would say, no, no thank you, we don't want that?

19 A. It's not a question of them saying they don't want it.
20 It's a question of the customer, whether they believe that they
21 have the capabilities that they need or not. And given their
22 current revenues, most customers are judging that they do not
23 currently have those capabilities.

24 Q. Do you think AdTheorent would pull out all the stops to, do
25 a pitch book, show all their capabilities to keep for that CMI

1 business?

2 A. Of course they would. But the point, as I explained
3 yesterday, is that everybody can argue that they are the best.
4 Everybody can pull all the stops, as you said. But that
5 doesn't mean that the customers are going to believe that, and
6 it doesn't mean that they will actually move their business.
7 That is why the merger guidelines are clear, that what we focus
8 on are actual realized revenues in the relevant market.

9 Q. Got it.

10 But your opinion essentially hangs on the decision of
11 one agency deciding where to put its business. If it moved
12 that business from Lasso to AdTheorent, that would totally
13 scramble your market shares, right?

14 A. No. I mean, it would change the market shares to some
15 extent, but it would not scramble it. I have, as I explained
16 yesterday, many what-if analyses, including one where the
17 fourth bar here on your chart, I basically add ten more
18 competitors with their size, and I still find that there would
19 be a substantial lessening of competition.

20 Q. We will definitely come to that.

21 But your view is that there would still be
22 anticompetitive effects from the merger if Lasso lost 50
23 percent of its business?

24 A. That's probably true.

25 Q. But you don't know?

1 A. I haven't done that specific analysis.

2 Q. In fact, we have heard a lot of testimony that agencies
3 review who they are going to spend with every year, right?

4 A. We heard some of that, yes.

5 Q. Now, when you are looking at these fringe competitors and
6 their ability to compete, did you consider if any one of these
7 fringe competitors has \$10 million of cash on hand? Let me ask
8 you this. Did you consider how much cash on hand any of these
9 fringe competitors has?

10 A. I don't think so, no.

11 Q. Does it make a difference to your potential future
12 competitive significance if you have a billion dollars in cash
13 on hand?

14 A. I mean, not necessarily.

15 Q. In your analysis of the competitive change, it doesn't
16 matter if one of these fringe players has a billion dollars in
17 cash or \$2.5 million in cash, right?

18 A. So if somebody has a good idea, if somebody can deliver on
19 a capability, then in general they may be able to go out and
20 get investors to support that. So, yeah, we heard testimony
21 from the Trade Desk, right, about how -- as I believe you have
22 argued repeatedly, they are well capitalized and so on and so
23 forth. But even they, with all those capabilities, they are
24 both reliant on IQVIA, as they said, and they have had many,
25 many delays, and they found entry into this space to be much

more challenging than they anticipated.

Q. I'm sorry. I am just asking whether you analyzed whether any of these competitive fringe players, how much cash on hand they have. Did you analyze that?

A. I did not.

Q. Thank you.

Did you analyze the capabilities of these specific DSPs? Did you analyze them?

A. Yes and no. No in the sense that I'm not an industry expert. I'm an economist. And what I do is, I certainly looked at some qualitative evidence that talked about their capabilities and how some were less competitive with merging parties and so on.

But, by and large, what we do as economists, again, is we look at revenues. I may not be able to explain exactly why some of these players just don't succeed, but if we see them making only a tiny fraction of the revenues of the merging parties, and some of them have been in the market since 2019 or early on, that means that they are lacking in capabilities, sort of the proof is in the pudding.

Q. I think that's very helpful.

So your assumption is that there is something about the capabilities of these fringe competitors that's lacking compared to the big three, right? That's what you just said?

A. I said that at the end of the day they can't compete as

effectively.

Q. You can't point -- that's fine. That's fine.

Let's do another example. Suppose that Pfizer wanted to put out all of its HCP programmatic to bid to The Trade Desk. Do you think The Trade Desk would pull out all the stops to try to compete for that business?

A. Every competitor is going to try to win the business, whether they have what it takes to win the business. That's a different question.

Q. Do you think -- we saw the gentleman from The Trade Desk yesterday, and I think you recall he showed up at Digital Pharma East and said: We are the leaders in programmatic. He has posted to his Facebook page and LinkedIn that they want to offer best-in-class HCP and DTC programmatic advertising.

Do you think that The Trade Desk would deploy all the resources it could to win that business from Pfizer?

A. It will, but, as I have explained in my report, success in DTC, which is where the Trade Desk is successful, is no guarantee of success in HCP. There are other examples outlined in my report, your Honor, of some of the players we see in the screen there that are actually quite successful in DTC, and they still -- they have been around in HCP for a long time, and they don't really make any meaningful revenues. As we heard from The Trade Desk, HCP is complicated. And, as you said, they are trying hard, but they have faced many challenges.

1 Q. I think I just asked if The Trade Desk would pull out all
2 the stops to compete for that business. Your answer is yes,
3 right?

4 A. Yes. But it's unclear it would be effective.

5 Q. Do you believe The Trade Desk would say, oh, Pfizer, we are
6 not going to build out any kind of reporting capabilities or
7 other functionalities that you might want because we are just
8 not interested in your business?

9 A. Of course they wouldn't, but -- and they explained that
10 they are trying to build all these things, and they also
11 explained that they are relying on IQVIA in order to do that.

12 Q. Yes. We will definitely come back to that.

13 When did Lasso leave the competitive fringe?

14 A. I don't know.

15 Q. How would you determine that?

16 A. I mean, if we had similarly good revenues further back, we
17 would just look year by year to see when they grew enough. I
18 also say, from the qualitative evidence, from the moment that
19 they entered in 2020, we see DeepIntent talking about them
20 as -- I forget the exact superlative, but their most formidable
21 competitor or something like that. Again, there are many, many
22 documents in both of my reports about that.

23 Q. Was Lasso in the competitive fringe in 2019? It didn't
24 exist in 2019, right? Was Lasso in the competitive fringe in
25 2020?

1 A. Again, I don't have exact revenues so I can tell you that,
2 but probably not, given what we see in the qualitative
3 evidence.

4 MR. TULUMELLO: Can we put up on the screen what the
5 Lasso revenues were in 2020.

6 Q. Do you see that number?

7 A. I see it.

8 Q. Does that -- is Lasso a dominant player in 2020 in HCP
9 programmatic?

10 A. As I believe you showed me earlier, overall industry
11 revenues were smaller back then, so we would need to look at
12 everybody's revenues in order to answer that.

13 Q. Let's set that aside.

14 Your analysis is designed to look at what the
15 competitive constraints are on the merging parties, right?
16 Like you testified yesterday, you have to draw a circle around
17 the competitors to get a good understanding of what the
18 competitive constraints are, right?

19 A. I have done many, many analyses.

20 Q. Conceptually I am just trying to get at what you did. You
21 excluded --

22 A. If I can clarify.

23 Q. Sure.

24 A. In order to -- I don't think you can answer that in total.
25 You need to -- do you mean by market definition analysis? Do

1 you mean by competitive effects analysis?

2 Q. We are going to come to all of that.

3 Before I get to that, what work, if anything, did you
4 do to account for the uncertainty that the industry might
5 take -- the path the industry might take in the near term?

6 A. I examined the recent history of the industry, and I
7 determined, as you showed us earlier, that the industry is
8 relatively stable. So, yes, I looked into that.

9 Q. Did you try to predict the trajectory of technological
10 change in the market?

11 A. I don't know what you mean by that exactly.

12 Q. You testified, I think, in the credentials part of your
13 testimony that you had written many articles. One article that
14 you wrote is called Merger Review in Technologically Dynamic
15 Industries.

16 Do you recall that?

17 A. I do.

18 MR. TULUMELLO: Let's just call that up.

19 Q. This is what you wrote before you were testifying --

20 A. I'm sorry. Is this in my binder?

21 Q. It should be. DX-2069.

22 You write that the usual steps in the merger analysis,
23 defining a relevant market, assessing potential unilateral and
24 coordinated effects, and determining the likelihood of entry,
25 may require substantially more uncertainty -- may require

1 confronting substantially more uncertainty in a fluid,
2 innovation-driven industry.

3 You see that?

4 A. Yes.

5 Q. And do you agree with that statement?

6 A. I do agree with that statement.

7 Q. Then if we look at the end, you write: This brings us back
8 to the problem of assessing mergers in innovative industries.
9 Assessing a merger in such an industry may require forecasting
10 the direction of technological change and the path of
11 competition in more than one market or industry.

12 Do you see that?

13 A. I see that.

14 Q. And do you agree with that?

15 A. I agree with that. I will also note that this article is
16 about the merger of Google AdMob. The article explains, just
17 before the start of section 3: The FTC abandoned that
18 challenge when Apple, a well-capitalized company, indicated
19 that it planned to enter into space. But since then Apple
20 actually failed in that advertising endeavor and it stopped.

21 It just goes to show that just because there may be
22 well-capitalized potential interest or even people who say they
23 are actively looking to enter, until they actually succeed, it
24 can be speculative to just say we shouldn't do anything because
25 somebody is entering.

1 Q. I thank you.

2 Again, I just want to focus on the concept, which is
3 that assessing a merger in an industry, in such an industry, a
4 dynamic industry, may require forecasting the direction of
5 technological change and the path of competition in more than
6 one market or industry.

7 You agree with that concept, right?

8 A. I agree and, as I said, I looked at whether this market is
9 stable.

10 Q. All I'm asking you is if you agree.

11 A. OK.

12 Q. Now, let's come back to what you testified yesterday, which
13 is, you were trying to look at what are the competitive
14 constraints going to be on Lasso and DeepIntent in the future,
15 right? That's what you're looking at. And you did a lot,
16 right? You did all kinds of analyses. But the idea, the big
17 conceptual idea that you are trying to convey, is that after
18 the merger there is not is going to be sufficient competitive
19 constraints on Lasso and DeepIntent to prevent them from
20 raising prices. Is that conceptually where we are going?

21 A. That's not quite right.

22 Q. What am I missing?

23 A. So it's not that there are not going to be sufficient
24 competitive constraints. PulsePoint will be around. There
25 will be others. But the point is that we are reducing the

1 competitive constraints substantially because the merging
2 parties have substantial head-to-head competition. So to the
3 extent that -- it's not about there will not be any competitive
4 constraints whatsoever, but, yes, a big important competitive
5 constraint is going away, and that means that they will be able
6 to raise prices.

7 Q. Right.

8 So after the merger you don't think there will be
9 sufficient competitive constraints on Lasso and DeepIntent to
10 prevent them from raising prices, right? That's what you are
11 saying?

12 A. Yes.

13 Q. And that analysis excludes Medscape, social media, and
14 these other providers, as you testified yesterday, right?

15 A. Social media is entirely within the analysis.

16 Q. We will get to that because I actually respectfully
17 disagree that social media is within your analysis.

18 But you were here when Mr. Gerszke said that
19 Medscape -- talked about Medscape's revenues. I want to be
20 mindful of the protective order issues here.

21 Do you recall -- do you remember how much generally he
22 said that Medscape earns in HCP one-to-one marketing?

23 A. I don't remember the exact number, but I remember that it
24 was quite large, which, again, indicates that it's probably
25 something different.

1 MR. TULUMELLO: Do we have the slide of the revenues?

2 We do not. We will come back to that.

3 Q. Whatever that revenue number is, right, which was
4 substantial, that was not included in your market-share
5 analysis, right?

6 A. It's a different product, so, no, it was not included.

7 MR. TULUMELLO: And if we pull up DX-1929 and go to
8 slide 31.

9 Q. You will remember that Medscape testified that on its
10 website it offers the ability to identify HCP audiences, to
11 design the HCP experience, to activate marketing, to optimize
12 and refine and to report results, right?

13 A. Yes.

14 Q. That's all for HCP one-to-one marketing, right? That's
15 what he testified.

16 A. It is. But it is also only in their property, and we heard
17 other testimony about how with HCP programmatic one of the
18 advantages is, you can reach people even if they don't go on
19 Medscape's website on any particular day and so on.

20 Q. Sorry. I understand.

21 One of the advantages of programmatic is you can go a
22 bunch of places, right? And you say Medscape, with its vast
23 amount of revenue from HCP one-to-one advertising, doesn't
24 count because it's just the Medscape properties, right?

25 A. So the way that I have defined my market, the product that

1 I'm looking at, is HCP programmatic advertising. So, yes.

2 This is a different product, even if it is HCP one to one.

3 Q. It's a different product. And because it's a different
4 product, it doesn't put a competitive constraint on the merging
5 parties, right?

6 A. So it's a more distant substitute. So as I explained
7 yesterday, your Honor, you can draw the circle in different
8 ways, and you can keep pulling in more and more distant
9 substitutes. But if you do that, you're basically going to be
10 bringing in revenues, including quite substantial revenues,
11 potentially that overstate the competitive significance of
12 whoever it is.

13 So essentially, again, if I fly to Chicago and there
14 is a merger of United and American, but we start putting in all
15 modes of transportation, we will be putting in a load of
16 revenues, but that doesn't mean that those revenues are going
17 to be constraining United and American in the same way that
18 Delta's revenues are constraining it.

19 Q. I think we get the concept of what we are talking about,
20 whether it's a competitive constraint.

21 You understand that Medscape is the leading and
22 dominant source of endemic inventory, correct?

23 A. Yes.

24 MR. TULUMELLO: Can we pull up the complaint, slide
25 44, see what the FTC alleges in this case.

1 Q. Endemic inventory. Health care advertisers can target
2 consumers on both medical sites and nonendemic sites, right?
3 Advertising on endemic sites, such as Medscape, the WebMD,
4 tends to be more valuable because the audience visiting the
5 site may be more open to considering a health care
6 advertisement. Then there is nonendemic inventory, like the
7 New York Times or ESPN, have broader overall reach, but market
8 participants believe that HCPs are less likely to engage with a
9 health care advertising place on those sites.

10 You see that?

11 A. I do.

12 Q. So you are taking the leading source of endemic inventory
13 in the entire HCP digital one-to-one world that can provide
14 audience identification, activation, report, measurement, and
15 you are putting that outside of your market because, in your
16 view, it's not a competitive constraint on the merging parties,
17 right?

18 A. No.

19 Q. You are not doing that.

20 A. No. That is not what I have testified.

21 Q. Let's take a look and see what happens if -- we reproduced
22 your Exhibit 1 as a circle chart, if we can put that up.

23 Let's take a look -- this is not going to be displayed
24 to the gallery, please.

25 If you add just the Medscape revenues over the

1 18-month period for HCP one-to-one digital advertising.

2 You see that?

3 A. I see it.

4 Q. That number is almost double the size of your market,
5 right?

6 A. So, as I explained yesterday --

7 Q. Is it double the size of your market or not?

8 A. It is.

9 Q. Thank you.

10 A. Which goes to show why this is not relevant.

11 Q. OK. Thank you.

12 You also testified that you didn't consider Doximity,
13 right, and you thought Doximity is out there doing something
14 different. Different product, not a competitive constraint.
15 Is that fair?

16 MR. TULUMELLO: I just want to pull up again a
17 document that we have seen, DX-2035. This is what Mr. Field
18 testified to. It is a -- I'm sorry. DX-2035.

19 A. I don't think this is in my binder.

20 THE COURT: DX-2035 is not in this binder.

21 MR. TULUMELLO: It's in the manila envelope.

22 Q. Mr. Field of Lasso was asked about this.

23 If we go to slide 17, you will recall that the direct
24 testimony is that Lasso was analyzing for a pharma company
25 where media exposure drives the most benefit. And what Lasso

1 reported is that AdTheorent, Doximity, and Instep Health are
2 where media exposure drives the most HCP benefit, particularly
3 in patient-level key-performance indicators.

4 Do you see that?

5 A. I do see it.

6 Q. If we go to slide 21, what Lasso recommends in bullet 2 is:
7 Continue investment with AdTheorent, Doximity, and Instep
8 Health.

9 Do you see that?

10 A. I see it.

11 Q. And so this is an example of a pharma brand evaluating how
12 its marketing digital one-to-one advertising is doing on
13 Doximity versus AdTheorent, right?

14 A. I don't know that it's versus. As we heard, for example,
15 from the Bayer witness, they use some of these things for
16 different reasons.

17 MS. CHUNG: Sorry to interrupt, but the printed
18 version that we were provided ends on page 12. You have a
19 final page that reads DX-2035, page 12 out of 12. We wanted to
20 just make sure that we all had the correct document to follow.

21 THE COURT: Mine also finishes at page 12.

22 Q. Let's go back then to -- it's page 9 in your version.
23 Thank you.

24 Now, on Doximity do you recall Veeva's testimony
25 yesterday that it had observed competition between Doximity and

1 PulsePoint and Lasso and DeepIntent. Do you recall that?

2 A. I believe what they said was that Doximity was seeing
3 competition from DeepIntent and Lasso, not the other way
4 around.

5 Q. If we can look at DX-2059, it says in the first line: You
6 have probably seen the earnings report from Doximity and the
7 reduced guidance. A big driver of the headwinds is competition
8 from programmatic HCP media like DeepIntent and Lasso.

9 You see that?

10 A. I see it. As I just said, and as -- I believe earlier you
11 showed me a chart where HCP programmatic advertising was
12 increasing. So it can be the case that Doximity is saying
13 competition from DeepIntent and Lasso even if they are not
14 feeling them as a particular competitive constraint.

15 Your Honor, as digital advertising has bloomed, I am
16 sure the New York Times is looking at digital advertising as a
17 competitive constraint to its print advertising. That doesn't
18 mean that the tech companies are staying up at night worrying
19 about losing business to the print edition.

20 Q. Just to go with your analogy then, you don't think that --
21 you think Doximity could be losing sleep about the merging
22 parties, but you don't think the merging parties are losing
23 sleep about Doximity. Is that right?

24 A. I mean, that's -- this email, that's what it's saying.

25 Q. Let's go to the earnings call to which this slide is

1 referring. This is very recent. This is the Q1 2024 Doximity
2 earnings call. This is where they reduce earnings guidance,
3 their future forecast. Do you know who Jeff Tagney is?

4 A. I do not.

5 Q. He is the CEO of Doximity.

6 In explaining why they have lowered their projections
7 for the year he says: I think, as we drill into it, we think
8 that we've effectively lost a bunch of share there to some new
9 market entrants, folks who have recently purchased some of
10 these banner platforms, and they really took our teeth, to be
11 honest.

12 Then he goes on to say: During upsell season, our
13 clients increasingly prefer to deploy incremental budgets
14 swiftly, and they want to expand and adjust their programs onto
15 Doximity with the click of a button, just like they would on
16 LinkedIn, Facebook, Amazon, or Google.

17 You see that?

18 A. I see it.

19 Q. You do not believe that Doximity is a competitor -- a
20 meaningful -- let me put it this way.

21 Your analysis does not attribute a single dollar of
22 revenue from Doximity as being a competitive constraint on the
23 merging parties, right?

24 A. I mean, this entirely consistent with what I just
25 explained.

1 Q. Again, back to your pie chart. And show what happens if we
2 just add Doximity revenues over the same time period.

3 You see that?

4 A. I see it.

5 Q. That, again, is multiple -- nearly a multiple double of the
6 market you calculated, right?

7 A. Again, it goes to show why this is not relevant.

8 Q. I'm with you.

9 Then you said to the Court yesterday you did a very
10 conservative analysis and you considered social media, right?
11 If we can pull up your slide. You see way over there in the
12 right, this is your chart, right?

13 A. Yes.

14 Q. This is your effort -- it's a conservative thought
15 experiment, including broader industry participants, right?

16 A. Yes.

17 Q. You're telling the Court that you are giving the merging
18 parties the benefit of the doubt, and you are going to consider
19 social media, and you attribute into your shares here XXXXXXXX
20 from LinkedIn, right?

21 A. Yes.

22 Q. But you do not include the XXXXXXXXXXXX for the LinkedIn
23 for doctors, correct? You did not do that, correct?

24 A. I did not.

25 Q. Meta. Meta, in your reply report, you grudgingly gave

1 about XXXXXXXXXXXXX of share to, is that right?

2 A. That's right.

3 Q. That was based on the fact that MedData group sells most of
4 its HCP audiences to Facebook, right? Let's please pull that
5 chart up. MedData Group -- this is a chart in Dr. Israel's
6 report that shows the sales of audience data, HCP audience
7 data, to various parties, and Facebook is XXXXXXXXXXXX and the
8 next are underneath it, right?

9 A. Yes.

10 Q. You believe that social media should be excluded from the
11 HCP programmatic market, right?

12 A. Yes. It's a different product. We have heard lots of
13 testimony to that effect.

14 Q. And your analysis, going back to your pie chart of the
15 XXXXXXXXXXXXXXX for Facebook or Meta, that's just based on IQVIA
16 selling to HCP audiences, right?

17 A. Yes.

18 Q. And you remember the testimony of Mr. Lin where he showed
19 you the hundreds and hundreds and hundreds of HCP -- I think he
20 said 300 different HCP audiences. Do you remember that?

21 A. I don't remember that he counted them, but --

22 Q. There were so many he couldn't count them, right? You
23 remember he said that?

24 A. I don't remember that. But, again, it's not about
25 counting. It's about revenues.

1 Q. I understand. But this analysis would not include any
2 revenue Facebook got from any HCP audience offered from any of
3 those hundred providers, right?

4 A. Well, to the extent that any of the other participants in
5 the fringe that I used to do this estimation use others, it
6 would. But, yeah.

7 Q. We have a lot to cover.

8 One question I wanted to ask you. I won't go into
9 detail on the Trade Desk, but your market does include
10 over-the-counter drug sales, right?

11 A. Yes. I believe the vast majority of the revenue of HCP
12 programmatic tends to be from pharma. Again, we heard the
13 Bayer testimony and all of that. If they are making revenues
14 on over-the-counter, it's included.

15 Q. Thank you.

16 I don't want to dwell on that because I think there is
17 a factual dispute, right. But you were here when XXXXX
18 testified that it gives XXXXXXXXXXXX a year to The Trade Desk for
19 HCP programmatic, right?

20 A. I was.

21 Q. And that's just one customer. And your total attribution
22 to The Trade Desk is -- it was XXXXXXXX, but then you bumped it
23 up to XXXXXXXXXXXX, right?

24 A. Yes.

25 Q. If we are looking at 18 months and XXXXX says, it gets

1 XXXXXXXX a year for OTC, essentially over 18 months that's

2 XXXXXXXXXXXXX?

3 A. Yes.

4 MR. TULUMELLO: Your Honor, I think we are going to
5 have to seal because I believe I have perhaps strayed
6 unintentionally into some information covered by the protective
7 order. I am not sure where I did that. If we could seal the
8 courtroom, I think that would be appropriate.

9 THE COURT: Any objection?

10 MS. FLEURY: No. We would prefer that because I think
11 there has been a number of revenue information from third
12 parties, and obviously their counsel is not here.

13 THE COURT: We will need to empty the courtroom of
14 anyone that is not a member of the litigation teams.

15 MR. TULUMELLO: I would ask that we seal the
16 transcript, any discussion of revenue figures that I may have
17 uttered, as well as the witness.

18 THE COURT: Very well. I will need to rely on the
19 parties to do an after-the-fact assessment of what needs to be
20 sealed.

21 MR. TULUMELLO: May I proceed?

22 (Continued on next page)

23

24

25

1 MR. TULUMELLO: May I proceed?

2 THE COURT: You may. Actually, let me just make sure.

3 Yes, you may proceed.

4 MS. CHUNG: Sorry to interrupt, but one additional
5 thing, while we are on the kind of cleaning up sealing and
6 documents, there are a number of documents that were mentioned
7 in the slides and the questioning where I didn't see them in
8 the binder or saw a reference in realtime to a specific
9 DX number. If we could ask that, so that we can follow the
10 full source, that whenever we refer to especially a third-party
11 document, that we have notice on what tab we have in the
12 binder?

13 THE COURT: I think you may have referred to certain
14 documents that were used yesterday and in previous days that
15 are not in the doctor's binder.

16 MR. TULUMELLO: They should be, and I will try to do a
17 better job of tying them; and if they are not, we will
18 certainly correct that.

19 MS. CHUNG: Thank you.

20 MR. TULUMELLO: You're welcome, you're welcome.

21 BY MR. TULUMELLO:

22 Q. So XXXXX testified XXXXXXXXXXXX of HCP programmatic sent to
23 the Trade Desk and if you do that over your 18-month period,
24 that would be XXXXXXXXXXXXXXXX, right?

25 A. Yes.

1 Q. And that is in fact the total amount that you attribute to
2 The Trade Desk in your market share analysis, correct?

3 A. In that analysis, yes. I also have the "what if" analysis
4 with the 10 proclivities that, you know, you can think of
5 them -- if you want to credit them for more revenues, you can
6 think of them as one of those 10.

7 Q. I'm just asking you've got XXX. So do you think that XXXXX
8 HCP programmatic is the only HCP programmatic customer
9 The Trade Desk has?

10 A. Given the testimony that we heard from The Trade Desk, it
11 sounds like they are possibly the biggest.

12 Q. You think they are the only?

13 A. I didn't say they are the only. I said that The Trade Desk
14 testified that they had about XXXXXXXXXXXX in total. So I don't
15 know what to do with that. There is a bit of a conflict there.
16 But even if the Trade Desk wasn't thinking of the XXXXX
17 revenue, their testimony indicates that they don't have a lot
18 more.

19 Q. Right.

20 If we could look at DX 2020.

21 Do you recall, this was the presentation that Veeva
22 gave to XXXXXXXXXXXXXXXX. Do you recall seeing that?

23 A. Yes.

24 Q. And if we go to slide 7 -- sorry, let's go to slide 2. The
25 Veeva Crossix contact here is listed as Baron Harper as the

1 gentleman who testified yesterday, right?

2 A. Yes.

3 Q. And then if we go to slide 7, this is the HCP chart that
4 Veeva ran on 2023 impressions to -- let's back out and just
5 look at the -- okay. XXX dominates programmatic impression
6 share. DeepIntent, Lasso only significant in HCP. And if we
7 look then at HCP, we see that at least on impressions The Trade
8 Desk is very close to PulsePoint and Lasso. Do you see that?

9 A. So, first of all, let me just note that this slide that
10 dominates refers to including DTC, right? So I think the Veeva
11 witness talked about this.

12 But, yes, if we focus on the HCP part, you know, I'm
13 not sure what their sample is. I will note that this is
14 inconsistent with the revenue data that we have, right. So,
15 for example, we see here that DeepIntent is -- seems more than
16 twice the size of PulsePoint and Lasso seems bigger than
17 PulsePoint. So, again, this isn't information they gathered on
18 revenues with subpoenas, and I'm not sure exactly where they
19 are getting it, what their sample is, but their sample doesn't
20 seem to be representative.

21 Q. Okay. What Veeva did, Veeva testified that it tracked all
22 HCP programmatic impressions to be able to report this to XXX
23 XXXXX XXXX, and this is what they found from actual impressions
24 in the market in 2023, right?

25 A. I believe they said it was impressions that they did

1 measurement for.

2 Q. Correct. Okay. So this -- exactly. Agreed. Okay?

3 A. So this is not necessarily representative and, in fact,
4 this chart is inconsistent with the revenues.

5 Q. Okay. So but this is just 2023, and Veeva, we know, is not
6 measuring -- it's not measuring every HCP programmatic campaign
7 in the market, it's just measuring some of them, whatever their
8 share is, right?

9 A. Yes.

10 Q. And in that share, XXXXXXXXXXXXXXXX is neck and neck with
11 PulsePoint and Lasso, right?

12 A. Yes.

13 Q. Okay. All right.

14 A. In impressions, not revenue.

15 Q. Understood.

16 And what we have from XXXXXXXXXXXXXXXX is we never
17 actually got revenue, documentary evidence from The Trade Desk
18 on HCP revenue because they told us they didn't have it and
19 instead we got cost information. That's the spreadsheet that
20 we saw, right?

21 A. That -- there was a different spreadsheet with revenue,
22 which is what I relied upon.

23 Q. I see. Okay.

24 So let's then turn to what I think is kind of the
25 heart of your analysis. If we can go to your slide 8. And

1 this is where you are talking about critical loss analysis of a
2 SSNIP on DeepIntent and it says, "Based on actual customer
3 choice data; division inside candidate market more than three
4 times the critical loss threshold, HMT satisfied even under
5 Dr. Israel's own inputs." Do you see that?

6 A. I do.

7 Q. It all sounds very robust and scientific, and I want the
8 Court to really understand exactly what it is you did when you
9 looked at customer choice data. Okay?

10 So you tell me -- what I understand you did is you
11 looked at a document from DeepIntent that recorded win/loss
12 data, right?

13 A. I looked at a database from DeepIntent, yes.

14 Q. All right. So we have a win/loss database and what you did
15 there is then you looked at things in that database that said
16 loss, right?

17 A. Yes.

18 Q. And then you tried to figure out where did that -- does
19 that loss show up in the transaction documents for PulsePoint
20 and for Lasso?

21 A. In the ordinary course transaction data.

22 Q. Right. Okay? So a win/loss spreadsheet for -- or database
23 for DeepIntent, if there was a loss, you then said, if -- I can
24 match this to PulsePoint or Lasso. That's the basic concept.

25 A. Yes.

1 Q. And what you found is I think you basically -- 80 -- you
2 said 80 percent or so of the losses went over to DeepIntent and
3 Lasso that's --

4 A. PulsePoint or Lasso.

5 Q. Okay. All right.

6 And so let's just look at a couple top line numbers
7 because I think it's very important for the Court to understand
8 this is like the guts of this analysis.

9 DeepIntent testified that it runs about 3500 campaigns
10 a year, which would be about 10,000 total campaigns. And you
11 recall that PulsePoint testified that it's run about 16,000
12 campaigns, right? And this database had 2,432 total
13 opportunities, right, in total over the time period. And of
14 that, 1,565 were for HCP advertising, right?

15 A. Um-hmm, yes.

16 Q. All right. And of those, DeepIntent won 1,067 of them,
17 right?

18 A. Yes.

19 Q. And then 388 were lost, right?

20 A. Yes. And this are looking at the entire time period in the
21 data or just 2022 and 2023?

22 Q. I'm looking at what you analyzed in your data set. So you
23 found 388 lost opportunities, right?

24 A. I believe over the entire time period in the data, yes.

25 Q. And then you did your win/loss analysis based on 33?

1 A. Only in the opening report.

2 Q. I agree. But your opening report coming to the Court to
3 enjoin the merger was based on 33 observations where you found
4 an opportunity listed in the DeepIntent document that you
5 thought could be matched to Lasso and PulsePoint, right?
6 That's 33. That was the original number, right?

7 A. No. So the 388 is the number over the entire time period
8 that they lost, so DeepIntent, they are successful, they
9 generally win when somebody comes and considers them.

10 And this is a pretty time-consuming exercise, as you
11 might imagine, just looking through the different data sets and
12 trying to match them. So in my opening report, I only had time
13 to focus in -- on 2023. So these are all of the opportunities
14 that DeepIntent, in the ordinary course of business, classified
15 as being lost to competition in 2023. You know, there is
16 evidence in the record of Mr. Paquette, for example, asking to
17 review this data to understand composition.

18 Q. We are just -- and I think we are just trying to clarify,
19 make sure the Court understands, there are 2432 in the data set
20 you reviewed, there were 388 lost opportunities and you looked
21 at 33, is that right?

22 A. There is 388 over the entire time period.

23 Q. Okay.

24 A. So the 33 are in 2023.

25 Q. Okay.

1 A. For my reply report, I had more time and I extended the
2 analysis to 2022 as well. So there is a hundred-something in
3 the final analysis.

4 Q. Okay. And I just wanted to, if we can go to the next
5 slide, I think it's important -- so what you literally did is
6 there are these spreadsheets and databases for DeepIntent, and
7 then you said you went and you tried to identify what the
8 campaign was in the transaction data. And I just want to give
9 the Court a sense of what these documents actually looked like.
10 So these are the win/loss data, DX 2083 and DX 1703. And what
11 you tried to do is you look at the win/loss data from
12 DeepIntent. You found an entry, and then I tried to match it
13 to transaction data on PulsePoint, right?

14 A. That's right.

15 Q. Okay. And that's all the data you had available to you,
16 right, is the spreadsheet descriptions, correct?

17 A. That's right.

18 Q. All right. And then you -- and then if you made the
19 judgment that these were similar, you said -- we can go to the
20 next slide. You said these were a match, right?

21 A. Yes.

22 Q. And in fact, you understand that this particular example is
23 drawn from a match you found?

24 A. I don't recall every match, but --

25 Q. Okay. And would it surprise you if the data actually

1 showed that this is not a match and that these are for
2 completely different brands and in the spreadsheet one said
3 Qelbree and in the spreadsheet one says Gocovri, and Qelbree is
4 an ADHD medication and Gocovri is an antiviral.

5 A. Okay.

6 Q. Then what you did is you said that's a match and you said
7 you assumed that \$150,000, all of it went from DeepIntent to
8 PulsePoint?

9 A. I have done it two ways. Both just counting opportunities
10 and counts budgets.

11 Q. Okay. But one of the things you did was counting budgets,
12 right?

13 A. One of the things.

14 Q. And so let's just do another example. Okay? This is
15 another match, Heartbeat Grail Galleri on the end HCP and you
16 matched this as an example. Would it surprise you that
17 actually when you look at your transaction data these are for
18 two separate advertising companies with campaigns run on
19 totally separate times and yet you called that a match, right?

20 A. I looked at campaigns within the same year --

21 Q. Okay.

22 A. -- but yes.

23 Q. Okay. And then in some cases, you see Heartbeat Grail
24 Galleri HCP MS, in some cases it wasn't clear to you whether
25 that was close enough to the language in the spreadsheet on the

1 PulsePoint or Lasso transaction data that you actually went to
2 a website and typed in the descriptions that we see of the
3 names and had the website algorithm tell you which one it
4 resembled most closely, right?

5 A. I'm not sure I follow.

6 Q. Okay. Can we just pull up that footnote real quick?

7 In a small number of cases, a DeepIntent loss could
8 plausibly be matched to both and in those cases you select the
9 match based on the similarity score between the two pairs of
10 strings. And if you go to this website, that's a website that
11 will tell you sort of which words in the string from one
12 spreadsheet are -- sort of more closely resemble -- no, that's
13 not what it does?

14 A. No. Let me explain.

15 This is not a website that does that. This is
16 documentation for a string-matching algorithm. So it's
17 documentation that explains, you know, how you can look for the
18 similarity of text strings.

19 Q. Okay. But basically when you found entries in these
20 spreadsheets that to the human eye you could not decide, you
21 used some algorithm to figure out if it was a match, right?

22 A. I -- yes, I looked at --

23 Q. All right.

24 A. -- the similarity of the strings.

25 Q. Let's get to the budget versus spend piece. Keep going.

1 So when you found matches, one of your methodologies, the one
2 that finds 80 percent of all of the business going from the
3 merged -- sorry, from DeepIntent to Lasso or PulsePoint used
4 budget, right, so the budget number that was presented to
5 DeepIntent in like the RFP exercise, correct?

6 A. Correct, I --

7 Q. And then --

8 A. My counts also find broadly similar results, but yes.

9 Q. All right.

10 A. One of my analyses did it that way.

11 Q. But, again, I just want the Court to understand what you
12 did.

13 So when you actually go to the transaction documents,
14 the budget that you attributed to Lasso and PulsePoint was far
15 in excess of the actual spend, correct?

16 A. So sometimes it was higher, sometimes it was lower.

17 Q. Oh, sometimes it was? Okay. For on these examples, I just
18 want to walk through -- take the first example. I know I am
19 getting short on time.

20 With the first example you have a campaign that you
21 said was \$250,000 and then your -- and when \$2,000 was actually
22 spent. And what you say in your analysis is \$250,000 went to
23 Lasso and PulsePoint. Right? Is that right? That's right?

24 A. Yes.

25 Q. Let me just put up your teeter-totter. And the reason

1 this is so important is because, post merger, what you are
2 analyzing in that win/loss data is how much of that money
3 that's going -- that budget that's going to Lasso and
4 PulsePoint would be captured, recaptured by Lasso, right? So
5 in your analysis, if a million dollars is -- was in the
6 DeepIntent win/loss data and the spend for Lasso was \$2,000,
7 you would have a million dollars retained on the Lasso side
8 because you counted budget, not spend, right?

9 A. Yes.

10 Q. Okay.

11 A. By that methodology, yes.

12 Q. Thank you.

13 I just have a few further questions on the vertical
14 opinion.

15 You have testified there will be foreclosure in the
16 market by IQVIA. And do you --

17 A. No, I testified that they would have incentives to
18 foreclose.

19 Q. And you are familiar with the TPA data. Since the
20 acquisition of Lasso, has IQVIA ever denied a TPA to a DSP?

21 A. So as I explained, I wouldn't expect them to deny a TPA to
22 a DSP while this merger is pending.

23 Q. And so you think that the -- that the sort of policeman is
24 at the elbow and that is why none of -- that is why there
25 hasn't been the denials of TPAs, right?

1 A. That's a good analogy.

2 Q. Okay. And then you recall the Lasso recommendation
3 document that we looked at. That was March of this year, and
4 you recall -- March of 2023, where Lasso is recommending, hey,
5 keep your spend with AdTheorent and Doximity, right? And
6 there, the Lasso guys didn't say, hey, you are getting terrible
7 returns. We have better data. You should use Lasso. Right?
8 They said, no, keep your spend on AdTheorent and Doximity.
9 That's what that document reflects in the recommendations,
10 right?

11 A. So I don't know exactly what the context of that document
12 is, but, yes, that's what I was saying.

13 Q. And so -- and I take it the way you think this actually is
14 working in practice is that those line employees at Lasso got
15 an instruction that we are under FTC merger review and we
16 should not tell this pharma company that they can only use us,
17 right? That's the whole theory is that we are all under
18 scrutiny, so we are not -- we are going -- we are going to do
19 things normal course but change direction fundamentally
20 afterward, right?

21 A. Well, I wouldn't expect the line employees to be changing
22 direction and sort of having this broader visibility about the
23 company strategy.

24 Q. Okay. I would not either.

25 You -- do you -- are you aware that there has never

1 been a section 13(b) injunction of a merger on a vertical
2 theory in the history of the United States? Do you know that?

3 A. I'm not a lawyer. I don't know that.

4 Q. You don't know that. Okay. This -- okay.

5 And do you believe your vertical opinions reflect the
6 same amount of rigor and reliability as your opinions on the
7 horizontal case?

8 A. I mean, I'm using the standard economic framework in the
9 vertical framework.

10 Q. But would you say your opinions on the vertical side are
11 just as reliable, just as rigorous, just as robust as they are
12 on the horizontal side?

13 A. I think they are reliable vertical opinions, yeah.

14 Q. And then one thing I want to --

15 A. I try to use the best data available in both.

16 Q. Okay. And then I believe that when you testified -- this
17 is my last couple questions. I believe when you testified on
18 direct, you didn't say that this was the first time you are
19 actually serving as the testifying expert in court, right?

20 A. I did not.

21 Q. Right.

22 And you work at Cornerstone Research, right?

23 A. I do.

24 Q. And for years and years, you have been in the support
25 role, doing the economic analysis for the testifying expert.

1 A. I have.

2 Q. And this is your debut as a testifying expert, right?

3 A. Correct.

4 Q. And you agree, as an economist that incentives matter
5 right?

6 A. Yes.

7 Q. And is it credentializing to be able to say to future
8 clients that you have testified on behalf of the FTC?

9 A. Sure.

10 MR. TULUMELLO: I have no further questions.

11 THE COURT: We are right at 10:30, so we will take our
12 break. 20 minutes. Don't be late.

13 I take it there is going to be some direct?

14 MS. CHUNG: Yes, your Honor.

15 (Recess)

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1 (In open court)

2 THE COURT: Good morning. Be seated.

3 Ms. Chung.

4 MS. CHUNG: Good morning, your Honor.

5 I think we can proceed first with an open session, and
6 I would at one point, when we start turning to portions that I
7 think may reveal confidential third-party and party
8 information, I will request.

9 THE COURT: Very well. Are we still sealed? Are
10 there people --

11 MS. CHUNG: No, we are not. We can be public.

12 THE COURT: I mean but is there anyone who is waiting
13 outside? No? Okay.

14 You may proceed, Ms. Chung.

15 MS. CHUNG: Thank you, your Honor.

16 REDIRECT EXAMINATION

17 BY MS. CHUNG:

18 Q. Dr. Hatzitaskos, your relevant product market is HCP
19 programmatic advertising, is that right?

20 A. That's right.

21 Q. And where did you get the term or the concept HCP
22 programmatic advertising?

23 A. So it's something that's all over the record, your Honor.
24 It's something that we have heard many witnesses testify to
25 here. Nobody seems confused about what we are talking about.

1 It's something that's routinely used in the industry.

2 Q. And when sitting in the hearing last week and this week,
3 you have heard various witnesses testify about HCP programmatic
4 advertising. Who are the top competitors that are consistently
5 identified in testimony?

6 A. So I think we've consistently seen the big three, right?

7 So if you recall, yesterday there was testimony by two
8 aspiring entrants, members of the fringe, that we have heard
9 are well-capitalized and so on, and really the three, when they
10 talk about the market, HCP programmatic advertising, they are
11 really talking about the big three.

12 Q. Today we heard a series of questions from defense counsel
13 asking you why you haven't accounted for or included endemic
14 industry and social media in your product definition, is that
15 right?

16 A. That's right.

17 Q. And your opinion or your statement was that they were
18 irrelevant. Did I get that right?

19 A. That's right.

20 Q. Okay. So to illustrate a little bit that more clearly, I
21 would like to try an analogy, so bear with me.

22 I think one of the analogies that you have used in
23 responding to that question was the idea that if you go from
24 New York to Chicago, you can take a plane, you can take a bus,
25 you can take a train, but if you are looking at a merger

1 between United and American, Delta revenues and United revenues
2 and American revenues would be relevant, but others would be
3 irrelevant, other modes of transportation would be irrelevant.

4 Did I understand that right?

5 A. Yes, you could account for them as a competitive
6 constraint, but if you just blindly pull in the revenues, it's
7 really going to overstate the competitive significance, right?

8 A dollar of Delta is a much stronger competitive constraint
9 than a dollar of Amtrak.

10 Q. So if you are looking at airline mergers, is the size of,
11 for example, Amtrak revenues and total Amtrak revenues
12 relevant to you in analyzing market definition or competitive
13 effects?

14 A. So certainly when you are defining the market, I don't
15 think you would include it, no.

16 Q. How about the revenue of Megabus?

17 A. No.

18 Q. Okay. Then applying that to this case, is it your position
19 that the revenue of endemic inventory in and of itself is not
20 relevant to understanding market definition for HCP
21 programmatic advertising?

22 A. Yes.

23 Q. And why is that?

24 A. Just, again, you know, it's a different product, it's a
25 different functionality. We have heard testimony and there

1 are many ordinary course documents about how it's a more
2 distant substitute, that people use it for different things,
3 that it has different features, less flexibility, and so on and
4 so forth. And so at the end of the day, whether or not the
5 add that it delivers is the same, and we heard some testimony
6 that even that may not be true, but at the end of the day, the
7 purpose of it and the way in which you engage with it is
8 different.

9 THE COURT: Well, I guess I'm not understanding that.
10 If I'm a doctor and I'm holding my cell phone and I'm on
11 TheNewYorkTimes.com, and I get an ad and then I go to WebMD or
12 some other walled garden and I get an ad, how am I interacting
13 with it differently?

14 THE WITNESS: Yeah, so the key, your Honor, is that
15 you shouldn't be thinking about the doctor, you should be
16 thinking about the advertiser. Right? So if you look at the
17 merger guidelines, we say that market definition is a
18 customer-centric exercise. So really it's about what is the
19 customer need. And the advertiser, you know, you heard from
20 ad agencies and so on that they look for -- it offers different
21 things to them. Right? So ultimately it delivers an ad to the
22 doctor. From the doctor's perspective it may be the same, but
23 the ability to reach the doctor, whether or not they go to
24 Medscape or Facebook or whatever on that day, the ability to
25 have a flexible budget that they can increase or decrease, all

1 of those things are advantages of HCP programmatic advertising
2 that are not offered by some of these competing products.

3 THE COURT: But some do offer it, some that are not
4 the big three.

5 THE WITNESS: Yes. So there are other providers of
6 HCP programmatic advertising, right, so the long tail that we
7 saw in the two charts that I showed you yesterday. They are
8 just not as effective.

9 BY MS. CHUNG:

10 Q. Maybe building on the Court's question, let me ask you
11 kind of a more conceptual question.

12 Is your opinion that HCP programmatic advertising is
13 the only, or even the relevant product market?

14 A. So it is a relevant product market in which we can analyze
15 the effects of the merger. As I mentioned yesterday, you could
16 define multiple markets. There is no such thing as a single
17 market. All you need to do is define the relevant antitrust
18 market that meets the hypothetical monopolist test, and that
19 is what we used to, for market definition and market
20 concentration purposes, determine that it's appropriate to
21 analyze the competitive effects of the merger.

22 THE COURT: Well, to go back to your Chicago analogy,
23 would all airlines that fly from New York to Chicago be
24 included in the circle?

25 THE WITNESS: You could certainly do it that way, and

1 frequently that is how we do it, right, because -- so, yes, if
2 you think about the two bar charts that I had yesterday, you
3 could include the blue bars on both of them. And the key
4 thing is that, at the end of the day, the conclusion doesn't
5 actually change, right?

6 THE COURT: I don't understand that.

7 So, for example, and I will use an example of an
8 airline that no longer exists but used to, People Airlines.
9 It existed when I was in college and it was the cheapest, and
10 so I would fly People Airlines, and they literally herded you
11 as a group on and off the plane. They didn't assign a seat.
12 It was just sort of --

13 THE WITNESS: Okay.

14 THE COURT: -- catch as catch can.

15 And arguably, using the words that you use—and this
16 is what I am trying to suss out—People Airlines was not as
17 effective as other airlines in providing an experience of -- a
18 pleasant experience of flying from New York to Chicago.

19 So when you say, well, yeah, there were others in the
20 fringe, in the tail, but they are not as effective, why would
21 their inability to compete with the big three necessarily push
22 them out of the circle?

23 THE WITNESS: So the term that we use is relevant
24 antitrust market, right? So I think the question is what is
25 relevant. If you are looking at a merger of United and

1 American, then you are thinking mostly about the customers of
2 United and American and what do they see as reasonable
3 substitutes. And then I think we can probably agree that
4 maybe most of them would turn to Delta or, I don't know, some
5 other, Jetblue, Southwest. The -- if you were looking at a
6 merger of People Airlines with somebody else, then, yes, you
7 would probably actually define a different market that would
8 be relevant to that transaction that, you know, may look more
9 at the low-cost carriers and so on and so forth.

10 So, for example, right now there is a different trial
11 in Boston with Spirit Airways and they probably have defined a
12 market that certainly wouldn't leave People Airlines out of it
13 if it still existed.

14 The point here is that we are looking at a merger
15 between two of the big three, right? So the question is, what
16 do the customers of those companies, what are reasonable
17 substitutes for them?

18 BY MS. CHUNG:

19 Q. So to follow the Court's analogy and to build on it, I do
20 want to ask you one question about how we approach market
21 definition, and market definition 101, if you may.

22 So when you define a relevant product market, do you
23 look at the product? So in this case flights from New York to
24 Chicago? Or do you look at each provider when you just start
25 at that basic stage of defining a relevant market?

1 A. Yes, the market definition itself is more about the
2 product, right, so it would be flights from New York to
3 Chicago, it would be HCP programmatic advertising, it would be
4 that conceptual what is the product.

5 Q. And when you then derive market shares under that market
6 definition, that's when you start counting providers. Did I
7 get that right?

8 A. That's right.

9 Q. And in your analysis, did you exclude anyone, say, like the
10 equivalent of a People Airline, in the fringe competitor that
11 does offer HCP programmatic advertising from your analysis of
12 market shares and concentration?

13 A. No. Anybody that I could find evidence offers HCP
14 programmatic advertising I included. If I didn't have revenues
15 for them, I tried to estimate them.

16 Q. So is it fair to say that in this analogy People's Airline
17 would be accounted for in your share calculations?

18 A. Yes.

19 Q. So returning to the current market HCP programmatic
20 advertising -- actually, let me move to a different topic and
21 shift gears.

22 So in defense counsel's questions, he's asked you
23 certain questions about your analysis of actual competitive
24 effects, the customer choice data. Did I remember that right?

25 A. Yes.

1 Q. And I remember, when you talked about the number of
2 samples that you analyzed to derive that effect, you had
3 mentioned that, for your reply report, you had gone to a
4 larger sample set?

5 A. Yes. In my reply report, I had more time. I analyzed 2022
6 as well, and I analyzed, yeah, more opportunities. It's a
7 majority of all the opportunities that were flagged as lost by
8 DeepIntent in those two years.

9 Q. And am I remembering right that in your report when you
10 account for both 2022 and 2023 opportunities, you actually bump
11 over like a hundred samples or a hundred matches in your
12 analysis?

13 A. Yes.

14 Q. And what was the result of that expanded analysis? Was it
15 consistent or inconsistent with the initial picture?

16 A. It's very consistent.

17 Q. And so today, when you were introduced with a few examples
18 of -- a few questions on I think a handful of matches in your
19 analysis, does that effect the level of confidence that you
20 have in the overall picture that you had?

21 A. It does not.

22 Q. And why not?

23 A. So your Honor, I don't know if you still have my binder
24 from yesterday. If -- you do. So if you go to my reply report
25 on page 88, it's the very last tab. On page 88, a few pages

1 before that.

2 THE COURT: I'm there.

3 THE WITNESS: So there should be a table, Exhibit R12.

4 So this is the critical loss analysis that they asked me
5 about, and the number that we were talking about is what is
6 here, the ADR estimate. So really this is the estimate of how
7 much is going to Lasso and PulsePoint. And the number that we
8 need to be over for the market definition to be satisfied for
9 the hypothetical monopolist test is the critical loss that you
10 see on the left. So, you know, I had it in my slides, but for
11 the result to actually change, you know, it doesn't matter if a
12 few of the opportunities that are matched even if they are
13 wrong, like basically, you know, the vast majority of what I
14 have matched would need to be wrong because, again, as I
15 mentioned yesterday, there is a threshold and we are not just
16 over the threshold by a little bit, we are well, well, well
17 above that.

18 Q. Because I find it sometimes hard to follow these very
19 number heavy charts, let me try showing a distilled version of
20 that in yesterday's demonstratives. Would that be okay?

21 A. Sure.

22 Q. So when you were explaining just now that you would need
23 to be wrong by a magnitude, a significant portion to be wrong
24 in your bottom line, is that essentially -- how is that
25 captured in the bullet points that we have here?

1 A. Yes. If you look at the second sample, it's under the
2 first one, that's where I mention in words what I was showing
3 in that table. So the critical loss is more than three times
4 smaller than my estimate of the aggregate diversion ratio. So
5 essentially I -- for me to have gotten the bottom line
6 conclusion wrong, I must have overestimated the diversion to
7 Lasso and PulsePoint not just by a little bit but by three
8 times as much.

9 Q. And so a couple of examples here and there would not alter
10 your confidence level in your results?

11 A. They would not.

12 THE COURT: So in another context is what engineers
13 might call an error budget, so you can be wrong by a little
14 bit, but you would still get the engine to work.

15 THE WITNESS: Yes, yeah.

16 THE COURT: Who determines the error budget?

17 THE WITNESS: It's really the data, right? So but
18 the methodology gives you what is the threshold, and then the
19 data gives you how far above the threshold you are, so . . .

20 THE COURT: Okay.

21 BY MS. CHUNG:

22 Q. Dr. Hatzitaskos, in response to defense counsel's
23 questions, you offered opinion that in your opinion the market
24 is stable enough. Do you recall that?

25 A. I do.

1 Q. And when you said that the market is stable, what were you
2 talking about? Were you talking about the overall size of the
3 market?

4 A. No.

5 Q. Then what were you referring to when you said that in your
6 opinion the market is stable enough?

7 A. I was referring to the competitive dynamics of the market,
8 you know, how it's structured, how it operates, and, you know,
9 the analysis that I showed, for example, that the shares, even
10 if the overall market is growing like most markets, most
11 markets are growing, even if the overall market is growing, the
12 shares from year to year are fairly stable.

13 Q. And I am going to play devil's advocate again here. Even
14 if the market were to be dynamic rather than stable, does that
15 mean that the standard economic tools that you use are no
16 longer applicable?

17 A. No. The tools are flexible and, as I mentioned, are
18 designed to work across industries. You know, in a different
19 industry maybe I wouldn't have done the check of how much does
20 it vary year to year. You know, we essentially just do more
21 things to determine that we are getting reasonable results, and
22 that's one of them here.

23 Q. As part of the question defense counsel showed you an
24 article that you authored titled "Merger Review in Technology
25 Dynamic Industries" that was marked as DX 2069. Do you

1 recall?

2 A. Yes.

3 Q. Let me show you the paragraph that the defendant excerpted
4 from, and this can be showed to the public galley.

5 So I am here on page 2 of DX 2069 and I'm going to
6 focus on the first paragraph on the top.

7 So in the second sentence I see the sentence that
8 defense counsel has shown you in an excerpt form. Do you see
9 that?

10 A. I see that.

11 Q. Is your opinion that standard economic tools cannot be
12 applied to markets that are rapidly evolving?

13 A. No. We just need to think more about them as I have done
14 here.

15 Q. And I have highlighted the next sentence which was not
16 included in defense counsel's excerpt of your article. Could
17 you read it out for the record?

18 A. Sure. "At the same time, there are large and potentially
19 durable welfare effects from failing to prevent mergers that
20 would reduce the incentive to innovate."

21 Q. And what did you mean from this sentence?

22 A. So I meant that just because an industry is evolving, just
23 because it's growing, there is continued innovation, that
24 doesn't mean that we need to sort of put our hands up and not
25 do antitrust. The innovation is coming from the competition,

1 and, you know, it's not going to stop entirely. Nobody is
2 saying that. But that doesn't mean that if you take out
3 competition innovation isn't going to slow down relative to
4 what we would have seen.

5 And, your Honor, as I mentioned previously, this
6 article is actually about Google buying at a relatively early
7 stage another -- a more general advertising company, online
8 advertising company; and, as I mentioned, the FTC stopped its
9 investigation because at the very end, Apple declared that it
10 was going to enter. But since then, Apple failed; and, in
11 general, while obviously this is still an industry that is
12 growing a lot, as we all know there are a lot of antitrust
13 concerns about Google and concerns that maybe this merger
14 should not have been allowed.

15 THE COURT: Yesterday, Ms. Chung used a term, I don't
16 remember exactly, an explosive entrant into a market. What
17 does that look like?

18 THE WITNESS: Sorry, I don't remember. Who said
19 that?

20 THE COURT: Ms. Chung.

21 Did I misquote you?

22 MS. CHUNG: I would love to be able to recall the
23 exact quote, but maybe I can guide the conversation in a way
24 that that would answer your, I think, underlying question which
25 I understand is that when you look at an entrant, like how do

1 you evaluate whether it's going to make a lasting and
2 meaningful impact on the competitive dynamic? Was that where
3 your Honor was going with the question?

4 THE COURT: Sure. We can ask that.

5 MS. CHUNG: Okay. I will try my best to address the
6 Court's question in our conversation.

7 BY MS. CHUNG:

8 Q. So Dr. Hatzitaskos, to answer that question, let me step
9 back. Is there a standard economic framework in analyzing
10 whether an entrant or an expansion should be credited or how it
11 should be evaluated?

12 A. Yes. Yes.

13 So, your Honor, the merger guidelines they walk
14 through market definition, they walk through competitive
15 effects, and then they go through a series of what we typically
16 call mitigating factors, or potential mitigating factors and
17 one of them is the potential for entry. So in my original
18 report, in section 5.1 and 5.2, I walk through the framework in
19 my analysis of the potential for entry to undo the competitive
20 harm that I have found.

21 Q. And when you look at entrants, is there a standard, perhaps
22 in my own words from yesterday, of evaluating whether an
23 entrant is explosive enough or impactful enough?

24 A. Yes, so in the guidelines we look at whether entry will be
25 timely, likely, and sufficient. So it needs to be all three in

1 order to really undo the competitive harm. So timely is easy
2 to understand. You know, if it's going to take ten years, then
3 there is going to be harm in the interim, right? Likely do we
4 think that we do expect them to succeed or is there a lot of
5 risk involved and so on and so forth.

6 So, for example, again, we spent a lot of my cross
7 with a chart of the competitive fringe in front of me, and a
8 lot of the members there, as I mentioned previously, have lost
9 revenue over the years or they are growing very, very slowly
10 relative to the big three, right, so there is no evidence -- I
11 think it's speculative to say that those are likely to become
12 as big as the big three or bigger.

13 And then they are sufficient. So, again, this goes
14 back to the idea that we need to look at revenues and how
15 effective a competitor is. Right? There could be ten more
16 members of the competitive fringe that are sort of in that low,
17 like not really making much meaningful revenue relative to the
18 big three, and that isn't really going to do anything. It's
19 not going to be sufficient to take us back to the premerger
20 levels of competition.

21 (Continued on next page)

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1 Q. And do you have an opinion in this case on whether entry or
2 expansion is going to be timely, likely, and sufficient to
3 counteract the anticipated anticompetitive effects from the
4 proposed merger?

5 A. Yes. I have looked as best I can at the question and my
6 conclusion is that it is highly unlikely.

7 MS. CHUNG: At this point, your Honor, I would like to
8 request to seal the courtroom so we can discuss specific
9 examples.

10 THE COURT: Very well.

11 Please leave the courtroom if you're not part of the
12 litigating teams.

13 (Pages 941-944 SEALED)

1 THE COURT: FTC have another witness?

2 MS. FLEURY: We have spoken to defendants about
3 calling one witness out of order. I think we are not formally
4 resting in that sense, but we are passing for the defendant's
5 case.

6 THE COURT: Very well.

7 Ms. Fiebig.

8 MS. FIEBIG: Thank you, your Honor.

9 We are prepared to call our first witness.

10 Just before we do, we wanted to provide one update to
11 the Court, because you had previously asked about the
12 administrative proceeding that was scheduled to begin on
13 December 20.

14 Just yesterday the parties heard from the
15 administrative law judge that he does not intend to proceed
16 with the part 3 hearing until he receives a ruling from this
17 Court. He invited the parties to file a motion for a
18 continuance, which he noted is routinely granted in these
19 circumstances. Even without a continuance he indicated that he
20 will not hear any evidence until January 4, 2024.

21 We wanted to share that information with the Court
22 before we call our first witness, which we are prepared to do
23 now.

24 MS. FLEURY: Your Honor, just to correct the record,
25 we will proceed with opening statements on December 20. He

1 indicated that he would wait until after. Given that it's
2 December 20, he would begin with evidence on January 4.

3 He did, after defendants communicated to him that they
4 would prefer to wait for the Court's ruling before beginning
5 that proceeding, the court in the administrative proceeding
6 said the parties could decide to collectively file a motion.
7 The FTC declined that request. We will not be filing a motion,
8 and we will be proceeding with trial on December 20.

9 THE COURT: Is IQVIA going to file a motion?

10 MS. FIEBIG: We certainly will, your Honor, but our
11 understanding is that for the last decades of practice, the
12 parties have typically stipulated that the part 3 proceeding
13 would be stayed.

14 The judge specifically noted in his message to the
15 parties yesterday that the purpose of the continuance would be
16 to conserve the resources of the parties and nonparties and
17 promote efficient judicial administration. I think, as we have
18 represented to the Court before, truly in the last 30 years
19 there has not been a part 3 merits proceeding that has happened
20 before the administrative law judge after there has been a
21 ruling on a preliminary injunction in a federal court like
22 this.

23 MS. FLEURY: Your Honor, there is one happening
24 shortly. There are historically -- there is right now a part 3
25 proceeding happening after a preliminary injunction ruling.

1 And in this case we are happy to submit the
2 documentation. We are proceeding on December 20 with opening
3 arguments. I am 100 percent confident that we will proceed
4 with the evidence in January, after the Christmas break.

5 THE COURT: This is all very interesting, but it
6 doesn't sound like there is anything that I need to determine
7 in that regard, so I will leave it to you and to the ALJ, whose
8 name I do not know, and ask that IQVIA call its first witness.

9 MS. FIEBIG: Thank you, your Honor.

10 As our first witness, we call Ms. Andrea Palmer. She
11 is the president of Publicis Health Media.

12 MR. OBARO: Good morning, your Honor.

13 THE COURT: Mr. Obaro?

14 MR. OBARO: Correct. I'd like to introduce counsel
15 for Publicis Health Media as well, Jeane Thomas, who is here
16 from Crowell & Moring.

17 ANDREA PALMER,

18 called as a witness by the Defendants,

19 having been duly sworn, testified as follows:

20 THE COURT: Mr. Obaro.

21 MR. OBARO: Thank you, your Honor.

22 May we approach?

23 THE COURT: You may.

24 DIRECT EXAMINATION

25 BY MR. OBARO:

1 Q. Good morning, Ms. Palmer.

2 A. Good morning.

3 Q. Thank you for joining us today.

4 Ms. Palmer, where are you currently employed?

5 A. Publicis Health Media.

6 Q. Is it OK if I refer to Publicis Health Media as PHM?

7 A. Yes.

8 Q. What kind of company is PHM?

9 A. We are a media advertising agency.

10 Q. What is your currently position at PHM?

11 A. I'm the president.

12 Q. How long have you been the president at PHM?

13 A. Five years.

14 Q. Can you briefly describe your responsibilities as the
15 president at PHM?

16 A. I run the company, so I oversee all of the talent, client
17 relationships, key vendor relationships and negotiations,
18 oversee all operations.

19 Q. In your role as the president, how knowledgeable are you
20 about the programmatic advertising services that PHM provides
21 to its clients?

22 A. I am knowledgeable, but I am not a detailed technical
23 expert.

24 Q. Do you recall that the FTC and IQVIA served you with a
25 subpoena, PHM with a subpoena in this litigation?

1 A. I do.

2 Q. You ultimately signed a declaration in response to the
3 subpoena in this litigation?

4 A. I did.

5 Q. How did you decide that you should be the one to submit the
6 declaration?

7 A. It was simply a decision. It was my words, my statements.
8 The declaration was to the extent of my knowledge versus
9 anything deeper, so it was most appropriate for me to be the
10 signatory.

11 Q. Do you agree with everything that is contained in the
12 declaration?

13 A. I do.

14 Q. Can you please explain to the Court the services, the types
15 of services that PHM provides to its clients.

16 A. Sure. We -- predominantly we are responsible for the
17 strategy and working with our clients on how to best use
18 advertising and media across all channels to reach the target
19 audiences, both health care professionals and consumers, how to
20 use different types of tactics, both online and analogue, to
21 serve ads to reach the consumers, so that's the strategy. Then
22 we are responsible for executing, and in the digital space, so
23 that we are executing the buys and managing the buys, and we
24 are responsible for stewarding the buys throughout the course
25 of the campaigns, analyzing, optimizing, post buying, making

1 sure everything ran as appropriate.

2 MR. OBARO: Your Honor, the remainder of my testimony
3 is going to touch on subjects that the witness and the company
4 has indicated includes confidential information, so at this
5 time I would ask that the court be sealed.

6 THE COURT: Very well. If you are not a member of the
7 litigating teams, please exit the courtroom.

8 (Pages 951-982 SEALED)

1 (In open court)

2 MS. FIEBIG: That concludes the video, and IQVIA is
3 ready to call its next witness.

4 THE COURT: Very well.

5 MS. FIEBIG: IQVIA calls Dr. Yael Hochberg.

6 THE COURT: And can we reopen the courtroom?

7 MS. FIEBIG: Yes, your Honor.

8 Yael HOCHBERG,

9 called as a witness by the defendants,
10 having been duly sworn, testified as follows:

11 THE COURT: Mr. Tulumello.

12 MR. TULUMELLO: Thank you, your Honor. Drew Tulumello
13 for IQVIA.

14 DIRECT EXAMINATION

15 BY MR. TULUMELLO:

16 Q. Professor Hochberg, can you please summarize your
17 educational background.

18 A. Yes. I hold a bachelor's degree in industrial engineering
19 and management from the Technion-Israel Institute of
20 Technology, a master's degree in economics from Stanford
21 University, and a Ph.D. in business administration in financial
22 economics from the Stanford University Graduate School of
23 Business.

24 Q. Who is your current employer?

25 A. I am a professor at Rice University in Houston, Texas.

1 Q. What is your job at Rice University?

2 A. So I am the Ralph S. O'Connor professor in entrepreneurship
3 and professor of finance at the Jones Graduate School of
4 Business at Rice University. I am also head of Rice's
5 Entrepreneurship Initiative and the Liu Idea Lab for Innovation
6 and Entrepreneurship at Rice. I sit on the leadership council
7 of Rice's Biotech Launchpad, that's our cancer drug
8 accelerator. And I am codirector of the Certificate in
9 Commercialization for Medical Innovation, which is our
10 healthcare innovation and entrepreneurship program, as well.

11 Q. Have you or do you currently teach at any business
12 schools?

13 A. I do. So I teach at the Jones School at Rice. I also
14 teach at the Kellogg School of Management at Northwestern
15 University. I used to be a faculty member there on the tenured
16 track. I was there for eight years. And I continue to teach
17 for them in their Silicon Valley program in San Francisco.

18 I have also taught in the past at the Johnson School
19 of Management at Cornell University, where I was a faculty
20 member and at MIT Sloan School of Management, and the
21 University of Chicago's Booth School of Business.

22 Q. Thank you.

23 How would you describe your scholarly area of
24 expertise?

25 A. So for the last 25 years, I have been studying the

1 economics of innovation and entrepreneurship. So I
2 effectively study new entry into markets and an understanding
3 of how companies enter, where there are opportunities for
4 companies to enter, which includes market dynamics, how they
5 are financed and how they compete in the market with
6 incumbents.

7 Q. Have you published scholarly work in peer-reviewed
8 journals?

9 A. Yes, quite a bit.

10 Q. And can you describe some of that work?

11 A. Sure. So I publish in primarily in journals in financial
12 economics, but also journals in the innovation space, and the
13 work is primarily focused on, again, the economics of
14 entrepreneurship, so venture capital, private equity, the
15 patterns of entrepreneurship across the United States and
16 across markets. Those would be some examples.

17 Q. Okay. And were you asked, through us, by IQVIA to offer
18 any opinions in this case?

19 A. I was, yes.

20 Q. And what were you asked to evaluate?

21 A. I was asked to use my scholarly expertise in the area of
22 innovation and entrepreneurship to look at Dr. Hatzitaskos's
23 assessment of the market for HCP programmatic advertising as
24 being a stable market with stable revenues, that is, not
25 changing over time.

1 MR. TULUMELLO: Your Honor, IQVIA would like to offer
2 Dr. Hochberg's opinion on this matter in the field of
3 economics, entrepreneurial innovation and strategy, and private
4 equity.

5 THE COURT: Any objection?

6 MR. SOHN: Your Honor, may we have a brief sidebar?

7 THE COURT: Certainly.

8 (At the sidebar)

9 MR. SOHN: So to be clear, we are not opposing
10 Dr. Hochberg testifying today in this matter, but we want to
11 make clear that we are objecting to her being proffered as an
12 expert into certain areas that her testimony may stray. One
13 of those areas may be about how the competitive effects of
14 merger review should be analyzed. She is not an expert on how
15 to analyze the competitive effects of a merger for antitrust
16 cases, and she has not been proffered in that sense. So we
17 want to note our objection on the record.

18 THE COURT: Someone either testifies as an expert or
19 not. Are you proffering her as an expert in those areas that
20 you described?

21 MR. TULUMELLO: No, I am not, no.

22 MS. FIEBIG: In the areas he described he is
23 proffering her as an expert.

24 MR. TULUMELLO: Yes.

25 THE COURT: In the areas that you described.

1 MR. TULUMELLO: Yes, your Honor.

2 THE COURT: Okay. And you understand -- I take it
3 there have been conversations between the parties --

4 MR. TULUMELLO: Yes.

5 THE COURT: -- concerning other areas in which she
6 will not --

7 MR. TULUMELLO: Correct.

8 THE COURT: -- be testifying as an expert?

9 MR. TULUMELLO: Correct.

10 MS. FLEURY: There haven't been any discussions
11 between us about what areas she was testifying at all, no.

12 THE COURT: Well, is there agreement as we stand here
13 that Professor Hochberg will be testifying as an expert in
14 those three areas that you mentioned?

15 MR. TULUMELLO: Yes. She is not going to offer an
16 opinion in the areas that counsel for the FTC identified.

17 MR. SOHN: And there is one other area we want to
18 discuss. We also want to note our objection to the extent she
19 offers expert testimony on the HCP programmatic advertising
20 industry. She has not been qualified as an expert there, and
21 we want to make clear that we would -- for the record that we
22 would object to any expert testimony on, you know, the
23 specifics of this industry and how it works.

24 THE COURT: Is she --

25 MR. TULUMELLO: She is not being offered in that area,

1 your Honor.

2 THE COURT: Okay.

3 COUNSEL: Thank you, your Honor.

4 (In open court)

5 MR. TULUMELLO: Your Honor, at this time IQVIA would
6 like to offer the testimony of Professor Hochberg as an expert
7 in the areas of private equity, entrepreneurial strategy, and
8 economics.

9 THE COURT: Very well. She will be allowed to testify
10 as an expert in the areas of economics, entrepreneurial
11 innovation, and private equity.

12 Mr. Tulumello.

13 MR. TULUMELLO: Thank you, your Honor.

14 BY MR. TULUMELLO:

15 Q. Can you remind the Court what your assignment was in this
16 case?

17 A. Yes, absolutely.

18 So I was asked to evaluate Dr. Hatzitaskos's
19 assessment of the competitive dynamics in this market and his
20 conclusion that this is a stable industry over time that is not
21 changing.

22 Q. Okay. And I believe earlier this morning Dr. Hatzitaskos
23 testified that the competitive dynamics in the market are
24 stable. Do you recall that?

25 A. I do.

1 Q. And do you agree with that conclusion?

2 A. I do not.

3 Q. Can you explain what you look at from -- or how you
4 evaluate the state of competitive dynamics in a market?

5 A. Sure.

6 So one of the important things in understanding
7 whether a market is stable in its competitive dynamics, is
8 stable over time, is whether it is undergoing significant
9 change and whether it has forces at work in it that change how
10 people are going to -- how entities are going to compete.

11 So we look in economics and strategy at indicia that
12 indicate evolution and types of evolution in market. That
13 includes things like pressures from regulatory change, it
14 includes technological changes, and it includes whether there
15 is a presence of changing customer needs or tastes in the
16 market.

17 So those are three big indicia that, when present,
18 suggest that a market is going to be rapidly evolving.

19 Q. Okay. And when you see those types of indicators of a
20 rapidly evolving market, what else do you need to evaluate to
21 determine whether the competitive dynamics in the market are
22 stable or not?

23 A. So we look at things like entry into the market by new
24 players or by players from adjacent areas. We look at how
25 people are competing, so business model experimentation,

1 experimentation with different combinations of technology,
2 different types of partnerships. And we look at things like
3 whether funding is flowing to this market and whether
4 investors view it as a good investment opportunity.

5 Q. Okay. So why don't we -- you have reached some
6 conclusions about whether there are different business
7 strategies or experimental business strategies in this market,
8 correct?

9 A. Correct.

10 Q. Let's go to some of them. We have a demonstrative that
11 calls them out.

12 You identified four, correct?

13 A. Yes. So recall that the indicia that I mentioned are
14 things like regulatory pressures, technological change, and
15 changing customer needs, all three of which are present in this
16 market. There are pressures from privacy, there are changing
17 technologies in the market, and there are changing needs on the
18 parts of customers who are increasingly interested in
19 optimizing across multichannels and are looking for omni
20 channel-type solutions.

21 All of these things have some interaction with them,
22 but as we look at what corollary from that, which is things
23 like entry and experimentation, we see, four basic groups of
24 experimentation that I have put on this demonstrative in front
25 of us.

1 Q. And the first one we have had a decent amount of testimony
2 about. That's generalist DSPs' increasing interest in
3 healthcare. Can you briefly explain that.

4 A. Yes. So the DSP software itself, the act of the
5 data-driven, software-driven delivery of ads to a specific
6 targeted individual or cohort, that's sort of -- I think
7 someone in the record called that uninteresting and
8 undifferentiated. It is the same software whether you are
9 doing healthcare, whether you are doing real estate, whether
10 you are doing consumer packaged goods. And there are very
11 large companies out there in the ad tech industry that are DSPs
12 that serve multiple industry verticals, such as, The Trade
13 Desk, Viant, Google, Yahoo!, and so forth. And in the last
14 recent past, these generalist DSPs—some selection of
15 them—have looked at the HCP programmatic and the healthcare
16 programmatic advertising industry in general and seen
17 opportunity for entry into that market and in some cases, such
18 as The Trade Desk, not just opportunity for entry, but risk to
19 their existing revenue if they did not enter into the market.
20 So The Trade Desk has turned to offering HCP programmatic,
21 AdTheorent recently branded an AdTheorent Health with an eye
22 towards this market, Viant is active in this market, and so
23 forth.

24 Q. Let's go to the second business strategy that you have
25 observed, and this would be publishers integrating with ad

1 tech. Can you please explain what that means.

2 A. Yes. So as part of this. business model experimentation,
3 it's not just that generalists are turning to specialty
4 verticals, but also that across the value chain of digital
5 advertising, you know, from the advertisers on one end to the
6 publishers, we are getting -- we are getting vertical
7 integration of different components of the value chain. One of
8 those is that publishers themselves—the people with the ad
9 inventory that is being sold—are integrating ad tech into
10 their technology stack and into their offerings so as to have
11 the ability to integrate the data from their publishing
12 inventory with various parts of the service of programmatic
13 advertising.

14 So a great example of this, which we have heard
15 plenty about over the last week and a half, is PulsePoint.
16 PulsePoint was purchased by Medscape. It's part of Internet
17 Brands, owns WebMD as well. So these are big, endemic
18 publishers with first-party data. As part of Internet Brands,
19 PulsePoint not only has access to that endemic inventory and
20 the data that comes from that, but also access to one of the
21 two big ad exchanges and the data that comes off of that and,
22 as a result, is able to offer a larger portion of the stack
23 than a standalone three-in-one.

24 Q. What about Haymarket and Haylo?

25 A. So Haymarket is another big publisher with a large

1 inventory of websites that HCPs use, and in this particular
2 case they launched a product called Haylo, which it's not quite
3 a DSP. It effectively skips the DSP and goes straight to the
4 supply-side platform, to the SSP, to effectively offer
5 programmatic on their inventory so, again, integrating part of
6 the stack into what they are doing and, again, differentiating
7 from just having the component by itself.

8 Q. Okay. And then if we go back to the third business
9 strategy that you have observed, it's ad agencies integrating
10 with the tech stack and the formation of partnerships. Do you
11 see that?

12 A. I do.

13 Q. Can you explain what you mean by ad agencies integrating
14 with the tech stack first?

15 A. Yes. So a great example of this is what's been happening
16 with Real Chemistry. So if we were -- on the previous slide,
17 we were, you know, over here with the ad inventory from the
18 publishers. Now we are over here with the advertisers, the
19 pharmaceutical companies and the agencies that represent them.
20 And those agencies are integrating parts of the programmatic
21 value chain into their stack so that, in part, they get to keep
22 more margin, but also so that they have better offerings for
23 their clients.

24 Real Chemistry bought Swoop and recently acquired
25 TI Health. TI Health is one of the healthcare DSPs, although

1 actually a white-labeler of Xandr. Swoop provides audience
2 data and other data. And they are -- it's sort of taking a
3 look at this as an opportunity to integrate these aspects
4 directly into their offerings instead of then going out and
5 contracting with a third-party.

6 Q. Okay. And what about the formation of partnerships?

7 A. Yeah. So partnerships are another way that ad agencies are
8 getting into this consolidation of the tech stack. So the
9 second example you see here on the slide is Ogilvy. That's
10 another ad agency. I believe they belong to William Morris.
11 Maybe they call themselves WM now. But they have partnered
12 with Doceree.

13 And Doceree is another really interesting DSP entrant
14 here, relatively new entrant, that offers programmatic that's
15 delivered at the point of care. So on electronic health
16 records, as the doctor is entering information into Epic while
17 you are in the office, you might have, you know, John, who is
18 overweight and prediabetic, and the doctor will then see ads
19 for Wegovy or Ozempic, and the partnership with Ogilvy takes
20 that to another point of care, which is telehealth and
21 basically delivers programmatic on telehealth, virtual doctor,
22 video doctor appointments.

23 Q. Can we pull up the press release of the Doceree and Ogilvy
24 strategic partnership which is demonstrative slide 23. This is
25 dated June 30, 2021, and it announces in the first line that

1 Doceree, the first global network of physician-only platforms
2 for programmatic marketing announced today the company has
3 entered a strategic partnership with Ogilvy Health to enhance
4 the point of care campaign offerings available to Ogilvy
5 Health's clients. Do you see that?

6 A. I do.

7 Q. And that's what you are referring to.

8 A. Correct.

9 Q. Okay. Let's step back again and look at the business
10 strategies you see in the market.

11 THE COURT: Could I ask what is a tech stack?

12 THE WITNESS: So think about this as all of the
13 components of the technology that are involved in the delivery
14 of the ad, from the creative that comes from the agency all
15 the way to the actual digital advertising inventory. So, you
16 know, we have to -- there is tech that's involved in creating
17 the audiences, right, all of this is data manipulation and data
18 science. There is tech that's involved in identifying the
19 appropriate audience for us to deliver our ad to and then
20 taking that to someone who is an identity provider who maps
21 that to these digital IDs that track us all and then sends
22 that to the DSP who is the demand-side platform that
23 effectively activates that campaign and bids on inventory. And
24 then that effect bidding is actually on an ad exchange that
25 sits in the middle, and then the inventory itself is coming to

1 the ad exchange from a supply-side platform, SSP, and then
2 surrounding that there are data management platforms that offer
3 some of the data on, say, the NPIs that offer data for the
4 measurement both in campaign and post campaign. And then, you
5 know, past the SSPs, we get into ad networks that are
6 aggregating up all of the inventory from a lot of smaller
7 websites, and then the publishers. It's kind of a simplified
8 version of it.

9 But each piece of this has some technology. Some of
10 it is offered individually as components by companies, but in
11 many cases—and this is true in software in general—there is a
12 tendency now to try and integrate parts of that stack so that
13 you can offer what we would call full-stack solution. It's
14 maybe a fancier way to say integrating -- vertically
15 integrating the technology portion of the value chain.

16 THE COURT: Got it. Thank you.

17 BY MR. TULUMELLO:

18 Q. The last example that you identify is increasing
19 accessibility?

20 A. Yes.

21 Q. Can you please explain to the Court what that means.

22 A. Yeah. So a lot of the elements that were major sources of
23 differentiation in this market when it first started out have
24 become less meaningful in recent years because there is
25 increasing access to a lot of the underlying components. So,

1 for example, you know, Lasso itself when it started out didn't
2 build DSP software. It white labels Xandr software. So the
3 customer sees a Lasso-branded DSP but the actual programmatic
4 is happening on Xandr in the background. Lasso is renting a
5 seat effectively. And there are others who do this, like
6 TI Health and E Healthcare Solutions. But you can go get a
7 self-service seat on one of these generalist DSPs and use that
8 to reach the publishing inventory that you wish to reach. So
9 that is one aspect of it.

10 But then many of these other components that used to
11 be differentiators, the ability to identify those HCPs and
12 target them and build the audiences that you wanted, those have
13 now become available for purchase. There's been investment in
14 companies that are providing those services. They are easier
15 to access. Measurement data has become easier to access from
16 multiple sources. And then the ability to connect between
17 those national provider identifiers, those NPIs that identify
18 the healthcare providers and these general identifiers that
19 track us all over the web, those are the identity graphs, those
20 have become more available. So companies like LiveRamp and
21 Throttle that have general identification systems are
22 connecting -- are now connecting to NPIs to allow you to reach
23 healthcare audiences. And this means that generalists can
24 access this data—the audience data, identity data, measurement
25 data—in the same way that in sort of a DeepIntent with its

1 three-in-one solution did, you know, early on and does today,
2 and it also enables new entrants to easily access components
3 they don't want to build themselves.

4 Q. Thank you.

5 Stepping back, you have identified as one measure of
6 competitive dynamics experimental or different business
7 strategies. Did you identify or look at any other factors to
8 assess the competitive dynamics in the market?

9 A. Yes. So I mentioned two—entry and then investment capital
10 that's flowing into the industry.

11 Q. Why don't we turn to investment first.

12 You have studied the private equity and venture
13 capital flowing into the industry, is that right?

14 A. Yes.

15 Q. Can you tell me what work you have done?

16 A. So, first of all, I did not just look at the private
17 equity that was flowing into this, but also looking at the
18 public markets' investment in some of these companies.

19 But what you see here is data from Pitchbook that is
20 nicely laid out for us on a timeline that shows investment by
21 private equity firms, venture capitalists, and private equity
22 funds into many of the participants in various parts of the
23 value chain.

24 Q. All right. Let's just look at a couple of examples. First
25 Doceree.

1 Now, can you explain what this slide is showing?

2 A. Yeah. So as I mentioned, Doceree is a healthcare-specific
3 DSP that has entered in a different way than some of the
4 existing competitors in the space. They are not a generalist,
5 but they are also not targeting the same kind of inventory.
6 They are going straight to point of care. And this is
7 basically -- this is showing their funding over the last two
8 years or so, their series A funding, which is sort of the
9 initial round of funding in the company, and then very recently
10 their series B funding, which was \$35 million of investment
11 from, you know, some well-known venture capitalists like Eight
12 Roads, which is Fidelity's corporate venture capital arm and
13 F-Prime, which is a well-known venture capitalist in Boston.

14 Q. And what conclusions do you draw from the investment by
15 private equity firms in a company like Doceree?

16 A. So what it says is that private equity firms are seeing an
17 opportunity in this market. They are seeing an opportunity
18 for new entrants to compete in new ways with new technologies
19 and new approaches with an opportunity to potentially be very
20 successful.

21 So an investor in a series A will often look for a
22 10X return on their investment and a series B maybe for a 7-8X
23 return, so looking to turn that 35 million into \$250 million
24 when they eventually exit. So they look at opportunities that
25 have large upside, and this is an indication the money flowing

1 in is an indication that there is interest and people believe
2 you can compete successfully in this market.

3 If the market had three players, three players alone,
4 and that was who was going to dominate the market going
5 forward, you wouldn't see investors continuing, not just back
6 in 2022, but even now in 2023, investing large amounts of money
7 in competitors -- in competing in this marketplace.

8 (Continue on next page)

1 Q. We don't just see private equity and venture funds flowing
2 into the DSP part of the market. We also see it on the data
3 side, correct?

4 A. Correct.

5 Q. Let's look at Komodo Health. Again, this is all public
6 information from PitchBook, correct?

7 A. It's commercially available information from PitchBook,
8 publicly available via press releases.

9 Q. Let me discuss just ask you a few foundational questions.
10 Why does a capital venture firm put out news or make public
11 whatever company it is investing in?

12 A. It's not just the venture capitalists to do this. It's the
13 companies that receive investment who want to show that they
14 have the backing of a very well-known and marquee firm, like
15 Andreessen Horowitz or Tiger Global. But the venture
16 capitalists advertise their portfolios as well because they
17 believe they have identified great opportunities, and they want
18 to indicate that they believe there is opportunity here, and
19 they have an interest in having other entrepreneurs know what
20 kinds of companies and what kind of spaces they are interested
21 in investing in.

22 Q. Both the private equity fund and the company itself have an
23 interest in promoting and publicizing the investment?

24 A. Typically, yes.

25 Q. You talked a little bit about some of these firms. But can

1 you just add a few -- a little bit of color about Andreessen
2 Horowitz and Tiger Global?

3 A. Tiger Global is one of the big later-stage investors in
4 some of the big tech company names that you have heard plenty
5 about, like Meta and others. Andreessen is one of the biggest
6 Silicon Valley venture capitalists out there, certainly one of
7 the most well known, if not the most well known. You can --
8 you often hear it referred to as A16z. But these are marquee
9 firms that invest in some of the major tech successes that we
10 have seen in the last decade, two decades.

11 Q. The fact that you see more than \$400 million pouring into
12 Komodo since 2021, what conclusions do you draw about that?

13 A. It says that someone sees a great future in selling
14 measurement data into the advertising tech industry.

15 Q. Now, did you also look at acquisitions in the market?

16 A. I did.

17 Q. Maybe we can put up the demonstrative on that.

18 Why did you look at acquisitions in the market?

19 A. I think this is just one more data point in the many data
20 points of how much this industry is changing, how much
21 adjustment is happening in this industry, which, to begin with,
22 was a fairly nascent industry, and where everyone is still
23 experimenting to figure out what the winning model is. And
24 acquisitions are part of that.

25 Q. You've listed Microsoft and Xandr here.

1 When did Microsoft acquire Xandr?

2 A. In 2022.

3 Q. What was the public price of that acquisition?

4 A. I believe it was over \$1 billion.

5 Q. You have also listed: Optimize RX here.

6 What are you referring to?

7 A. So Optimize RX is an ad tech company. They very much focus
8 themselves on the idea of providing AI powered services, so
9 really integrating some of the major advancements we have seen
10 in artificial intelligence to build better models for targeting
11 of physicians, and they have recently acquired Medicx's Health,
12 which is a health care DSP.

13 Q. Did you also analyze the amount of cash on hand that some
14 participants in the market have?

15 A. Yes, I did.

16 MR. TULUMELLO: Can we please put up that slide.

17 Q. This would be a reflection of the cash on hand that the
18 companies across the bottom have, is that correct?

19 A. That is correct.

20 Q. This is in millions of dollars, correct?

21 A. Correct.

22 Q. Why did you analyze cash on hand for these participants in
23 the market?

24 A. One of the things that you want to understand is what kinds
25 of resources are available for these entrants to be able to

1 invest in competing in this vertical that they have chosen to
2 express interest in, what is going to be their ability to
3 innovate to become competitive in these areas and what is the
4 ability of companies like DeepIntent or Medicx Health, who
5 focus only on health care, to compete and innovate in the face
6 of big entrants like The Trade Desk or Viant or AdTheorent.

7 Q. For the Trade Desk this information is publicly available,
8 correct?

9 A. Yes. For I believe most of these, these are companies with
10 publicly traded parents where you can get this information as
11 reported to the SEC.

12 Q. On the Trade Desk, if we can look at their growth, please.
13 Did you look at that?

14 A. Yes.

15 Q. Does this slide reflect your analysis of the revenues of
16 the Trade Desk since 2015?

17 A. Yes. This reflects the growth in the Trade Desk's revenues
18 since 2015.

19 Q. So pulling back out, we have talked about the innovative
20 business strategies, we have talked private equity and venture
21 funding. We have talked about recent acquisitions and we have
22 looked at cash on hand. Your report said that in order to
23 understand whether the competitive dynamics in the market were
24 stable, it's important to look at all of these things, correct?

25 A. Correct.

1 Q. And did Dr. Hatzitaskos analyze whether industry
2 participants are receiving private equity funding?

3 A. Not to my knowledge.

4 Q. Did Dr. Hatzitaskos analyze recent acquisitions in the
5 industry?

6 A. Not to my knowledge.

7 Q. Did Dr. Hatzitaskos analyze the implications of publishers
8 integrating ad tech in their stack?

9 A. No.

10 Q. Did Dr. Hatzitaskos analyze whether advertising agencies
11 are integrating with the tech stack?

12 A. No.

13 Q. Did Dr. Hatzitaskos analyze whether there are trends
14 towards increasing accessibility in the marketplace?

15 A. No. Excuse me. Sorry. No.

16 Q. I know you predicted what I was going --

17 A. I thought you had finished. I apologize.

18 Q. Now, I am going to pass you over, but I want to ask you a
19 few questions to clarify for the Court what you are and aren't
20 doing.

21 You are not saying today that -- which business
22 strategy is going to be the most successful, are you?

23 A. No, I am not.

24 Q. You are not saying which of the competitive set is going to
25 be the market leader, correct?

1 A. No, I am not.

2 Q. And you have not done a detailed analysis of all the
3 various capabilities and functionalities that the market
4 participants we talked about just went through?

5 A. No, I have not. It's not necessary in order to be able to
6 assess that this market is not stable.

7 Q. You have not looked at revenues or analyzed revenues for --
8 around the various industry participants we have talked about,
9 right?

10 A. No, I haven't looked at revenues or market shares. It
11 wasn't necessary in order for me to reach my conclusions
12 regarding Dr. Hatzitaskos' assessment of this industry as a
13 stable industry.

14 Q. Can you just explain why it wasn't necessary.

15 A. Yeah. So I think if you move to the -- I believe -- there
16 was a slide that you showed with all of the various different
17 pieces of what we were talking about a little earlier.

18 That's the one. Thank you.

19 There is so much happening in this industry. We don't
20 need to look at market shares, and I don't think that they
21 would be informative, given the forces that are at play in the
22 market. We see so much happening here. There is so much new
23 entry. There is new entry from its agencies, from the
24 generalists. There is a new entry of new health care focused
25 DSPs. There is all kind of consolidation happening, be it

1 through acquisition or partnership. There is vertical
2 integration. How this is going to look in two years is
3 anyone's guess. There is so much happening. And we can see
4 that without having to look at the market shares. And a
5 snapshot of market shares is not going to be informative in any
6 event, particularly not when the market is evolving like this.

7 Q. When we first met and you said your expertise was in
8 entrepreneurship, I said, well, what exactly is that? You
9 laughed, as you did now. You're the head of the Rice
10 entrepreneurship initiative, and you teach entrepreneurship at
11 Rice and these business schools. Can you tell me, what is
12 entrepreneurship?

13 A. Entrepreneurship is the entry of new firms into the market.
14 Big part of antitrust, obviously. But from a teaching of
15 entrepreneurship and the study of entrepreneurship, it's
16 understanding how now entrants can be successful, where are
17 opportunities for them, what are the market dynamics that offer
18 opportunities for new entrants.

19 We have frameworks that we have developed that allow
20 us to look across industries and help students, would-be
21 entrepreneurs, alumni, our faculty assess whether there are
22 opportunities for profit and entry and ways to compete with
23 incumbent and find the places where incumbents may have less
24 advantage and identify precisely the kinds of forces that we
25 have been talking about today and look at those as

opportunities for entry into markets and a place where incumbents often don't have advantages over the entrants.

Q. You have taught many business school students who are interested in doing startups, is that right?

A. That's all I do.

Q. And these are the tools that you use to help teach those students about how to evaluate innovation and entry into markets?

A. Yes. These are the frameworks and the approaches that I use and teach in my classes every year, and not just me.

Q. Last question. I understand you won a medal and that your initiative institute has won a prize. Could you please explain those.

A. Sure. So I was the 2016 recipient of the Ewing Marion Kauffman Medal for Distinguished Research in Entrepreneurship. This is one of those medals they give to somebody who is about to turn 40 who has had, I guess, significant influence on the field, they tell me, but it is the equivalent of the Fields Medal in mathematics, the Clark Medal in economics, the Fischer Black Medal in finance.

It's a nice recognition of how the rest of the field feels about my contributions to the bases and frameworks that we use to think about entrepreneurship every day. The program I'm much more proud of. We have been ranked for five years running as the number one graduate program in the United States

by Princeton Review and entrepreneur magazine, and we are ranked in the top five or ten by pretty much every other entrepreneurship ranking out there, and that's been my life's work for the past ten years, so I'm very proud of it.

Q. Thank you, Professor Hochberg. No further questions.

THE COURT: Can I ask a question. You testified about a particular generalist DSP that was looking to get into HCP programmatic advertising that has a substantial war chest, a lot of money on hand. There has actually been testimony yesterday and today concerning the difficulties that that particular entity has had in developing its HCP programmatic advertising capabilities. I know that the industry itself is not part of your expertise, but how do you analyze, in determining whether there is a dynamic, evolving market, there may be players that are so far ahead in terms of technology and innovation that they have to be considered separately?

THE WITNESS: Yeah. That's a fair question. I think -- I don't want to answer that question in general, and I also want to be clear that this was not an opinion I offered in my report. I think you realized that.

THE COURT: Yes.

THE WITNESS: But I think when we consider this industry and we consider the components that go into it, the DSP software itself is not necessarily distinguishing. The other components, yes, you have to figure out how to integrate

1 them. But if you have considerable resources behind you and
2 enough incentive to do so, a big company, like the one I
3 believe we all know who you're alluding to, has the ability or
4 the resources behind it to invest in making that progress.

5 And if you look at The Trade Desk and how it's grown
6 over time, I think that's indicative of the fact that they have
7 figured out how to create good products in the areas that they
8 have competed, and that -- the substantial resources they have
9 behind them gives them a shot.

10 I can't predict with any certainty that they
11 necessarily will overcome anything, but there is enough change
12 happening here in the market and enough accessibility in terms
13 of being able to access the audience data and the identifiers
14 and so much change that's happening because of privacy
15 considerations and the technology -- I mean, we didn't really
16 talking about AI here, but just everything that's going to
17 change because of what AI enables you to do in terms of
18 producing computer code on the fly and analyzing data,
19 collecting data, merging data to get that consistency,
20 optimization. All that is going to have massive exchange as
21 well, and that's all going to require companies to have war
22 chests to invest.

23 If somebody has that war chest on hand, that gives
24 them a good fighting chance in this world that is really
25 changing so much. This is an industry where Lasso entered and

became what it was in three years. They didn't exist in it --
I believe they incorporated in December of 2019, and look where
they are today. As technology changes here, I think anything
goes.

THE COURT: Thank you.

MR. TULUMELLO: Thank you.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. SOHN:

Q. Dr. Hochberg, you have been proffered as an expert only in
entrepreneurship, innovation, and private equity, is that
correct?

A. I believe it said entrepreneurial strategy and economics on
there as well, but I refer to the court reporter as to what it
was.

Q. You are not an expert on analyzing how mergers affect
competition, is that correct?

A. I study entry into markets and now entrants compete with
incumbents. I would say that I have expertise on that. So --
in that sense I think my expertise is extremely relevant to it.
Nobody has preferred me as an expert on mergers specifically,
but mergers are part of what happens in the competitive
dynamics in companies, and mergers are the primary way that
startups exit in markets.

Q. You are not an expert on HCP programmatic advertising,

1 correct?

2 A. No. I would not say I'm an expert on HCP programmatic
3 advertising any more than I'm an expert on any particular one
4 of the industries that I advise startups and students on
5 through the lens of my expertise every day.

6 Q. When you testified earlier about various subjects, like DSP
7 software and HCP targeting and measurement data, that's not
8 based on any professional experience you have working in HCP
9 programmatic advertising, correct?

10 A. Correct, it is not.

11 Q. You reviewed Dr. Hatzitaskos' expert report as part of your
12 work on this matter, correct?

13 A. I did.

14 Q. Would you please turn to the first slide in the tab in your
15 binder labeled demo. This is a demonstrative with the heading
16 post merger 2022-first half 2023 gross revenues in relevant
17 antitrust market.

18 Let me know when you are there.

19 THE COURT: I'm sorry. What binder are we looking at?

20 MR. SOHN: This is the binder of the FTC's exhibits.

21 THE COURT: The FTC's exhibits?

22 MR. SOHN: Yes. It is the white binder.

23 THE COURT: The one that says demo.

24 MR. SOHN: Yes, the tab that says demo.

25 THE COURT: That's the last one.

1 THE WITNESS: Thank you.

2 A. OK.

3 MR. SOHN: Because of confidential revenue information
4 on this, we request that this not be displayed on the screen in
5 the audience.

6 Q. You recognize this chart from Dr. Hatzitaskos' initial
7 report, right?

8 A. I do.

9 Q. And this chart shows his market-share calculations in HCP
10 programmatic advertising, is that correct?

11 A. Yes.

12 Q. And those market shares are based on his analysis of the
13 HCP programmatic advertising revenues of the companies listed
14 here, is that right?

15 A. That is my understanding, yes.

16 Q. You're aware that the FTC's expert calculated that IQVIA
17 and DeepIntent have a combined market share of 46 percent?

18 A. Based on a snapshot of six quarters of revenue from 2022,
19 2023, without accounting for any of the changes that I was
20 talking about in the market, yes.

21 Q. You never attempted to define a relevant antitrust market
22 as part of your work on this case, is that correct?

23 A. I was not asked to opine on the market definition, no.

24 Q. So you are not offering any opinion on the proper market
25 definition?

1 A. I am not.

2 Q. And you have no opinion on whether Dr. Hatzitaskos' market
3 definition is right or wrong, is that correct?

4 A. I am not offering any opinion on the market definition.

5 Q. You also didn't calculate any market shares as part of your
6 work on this matter, is that correct?

7 A. No. It was not necessary in order to reach my conclusions
8 regarding the lack of stability in this math.

9 Q. Your view is that market shares aren't informative in an
10 antitrust case such as this one, is that correct?

11 A. My viewpoint is that in a market that is experiencing this
12 much change and this much evolution, the market shares are not
13 informative for a forward-looking exercise of the sort that Dr.
14 Hatzitaskos says he's doing. Certainly a snapshot of market
15 shares, just based on the last year or so, is not going to
16 necessarily tell us a lot about what the forward competitive
17 dynamics will be in a market that's characterized by this much
18 change.

19 Q. Would you turn to the next slide, please. It has the
20 heading: Speculation that the competitive fringe will grow is
21 inconsistent with the data.

22 Do you see that?

23 A. I do.

24 Q. This chart is from Dr. Hatzitaskos' reply before, is that
25 correct?

1 A. Yes, it is.

2 Q. And this chart shows his market share calculations using
3 revenue data from both 2022 and the first half of 2023 shown
4 separately, is that correct?

5 A. Yes. He splits the six quarters that were on the previous
6 slide into four and two.

7 Q. Is it fair to say that according to this chart no company
8 had significant market share growth between 2022 and the first
9 half of 2023?

10 A. As a snapshot the chart says what it says.

11 Q. Your view is that these changes in market shares aren't
12 informative in this particular antitrust case, is that correct?

13 A. In a situation where you have a rapidly evolving market
14 like this, market that is not stable, we can do these
15 exercises. They are standard in antitrust. But they are not
16 going to give us a reliable picture of what is likely to be
17 happening going forward if what we want to do is really get a
18 sense of what competition is going to look like in this market
19 after a merger.

20 If we did this same snapshot for 2019, we did the
21 snapshot that Dr. Hatzitaskos did on the previous slide, Lasso
22 wouldn't be there. If we did it in 2020, they'd have 6.7
23 million of revenue and AdTheorent and Proclivity -- I think
24 there was one more on the previous slide -- already had more
25 revenue than that in 2022, first half of 2023.

1 The snapshot obscures trends and the snapshot doesn't
2 capture the effect of forces that are at play in the market.
3 If we had looked at shares in the media market as the Internet
4 was launching, if we had ignored the fact that the Internet was
5 launching, we would probably come to incorrect conclusions
6 about the future of the media industry was going to be. If we
7 looked at the taxi industry right before Uber launched, right
8 before we got -- right as we got mobile handhelds with GPS on
9 them, and we ignored the fact that technological change was
10 coming, we would have an incorrect snapshot of what the
11 competition in that market was going to look like.

12 My point is that we have to account for the fact that
13 there is this much change happening in the market, and Dr.
14 Hatzitaskos does not account for that in any way in these
15 analyses. This is just a snapshot of six quarters of revenue.
16 And in a market with this much change, I don't believe that
17 this is going to help us understand what the going-forward
18 competitive dynamics are. The merger guidelines tell us to
19 think about ongoing and reasonably foreseeable change and how
20 that might affect the reliability of the market shares. My
21 point is, simply, there is change happening here. Dr.
22 Hatzitaskos does not account for it.

23 Q. Please flip to the next slide. It has the heading: Four
24 out of five customers who engaged with but did not choose
25 DeepIntent; instead, chose Lasso or PulsePoint.

1 Do you see that?

2 A. I do.

3 Q. And this chart is used in both his initial report and his
4 reply report, is that correct?

5 A. I believe so, yes.

6 Q. It's based on analysis of win/loss data and other data
7 showing actual customer choices, is that correct?

8 A. For five customers, yes.

9 Q. You didn't analyze win/loss data as part of your work on
10 this matter, correct?

11 A. No. Again, my assignment was to assess whether this market
12 was, as Dr. Hatzitaskos said, stable. It was not to do a
13 win/loss analysis and it's not necessary for my conclusions.

14 Q. Sir, your view is that win/loss data isn't informative in
15 this particular antitrust case, is that correct?

16 A. I didn't say that.

17 Q. You didn't analyze any other data showing actual customer
18 choices for HCP programmatic advertising, is that correct?

19 A. No. It wasn't necessary in order for me to reach the
20 conclusions for the assignment I was given.

21 Q. Please flip to the next slide. It's about the
22 ordinary-course documents from DeepIntent and Lasso.

23 Do you see that?

24 A. I do.

25 Q. This slide summarizes Dr. Hatzitaskos' conclusions about

1 the defendant's ordinary-course documents, correct?

2 A. I believe so.

3 Q. You would agree that one of the main subjects of this
4 hearing in court is how IQVIA's proposed acquisition of
5 DeepIntent will affect competition, right?

6 A. Yes.

7 Q. And we have just discussed the FTC's analysis of market
8 shares, market share changes over time, win/loss data, and the
9 defendant's ordinary-course documents, right?

10 A. Yes.

11 Q. Is it your opinion that none of this evidence is
12 informative to the question of how this acquisition would
13 affect competition?

14 A. It is my opinion that Dr. Hatzitaskos, in doing this
15 analysis, did not account for the fact that there is
16 considerable change in this market and that his conclusion that
17 this market is stable and that, therefore, the market share
18 analysis is going to be informative of future competitive
19 dynamics is, in my opinion, incorrect. It's not -- and that
20 analysis is unlikely to be informative because there is so much
21 change happening.

22 Q. So it sounds like you are saying that that type of analysis
23 is not informative based on the specific characteristics of
24 this particular market, is that right?

25 A. I was asked to opine regarding this market. That is what

1 I'm opining on, yes.

2 Q. You have never been employed by a company that does any
3 form of programmatic advertising, right?

4 A. Not that I'm aware of, no.

5 Q. You have never --

6 A. Although, to be honest, I don't know that Rice University
7 doesn't do programmatic advertising. I get served banner ads
8 for my own MBA program all the time, and for that matter for
9 most of the universities I've been employed at. I apologize.
10 In my deposition I said no, but maybe the answer to that
11 question is yes.

12 Q. With the exception of universities that advertise --

13 A. Those are who my employers primarily have been other than
14 the time when I worked at Oracle. But that predated the
15 existence of programmatic advertising, so I'm pretty sure they
16 weren't doing it then.

17 Q. You have never published any articles about programmatic
18 advertising, correct?

19 A. Correct. As I have said, I am not an industry expert in
20 programmatic advertising. I am an economist who looks at
21 industries, a variety of industries, through the lens of
22 frameworks that we develop, not for any one specific industry,
23 but for the purpose of being able to apply them to any
24 industry.

25 Q. One of the reasons you claim that HCP programmatic

1 advertising is rapidly evolving is due to evolving regulations,
2 is that right?

3 A. It's due to the pressure that is coming from the debates
4 around privacy regulation and privacy regulation that has been
5 happening, and that is overall affecting how the advertising
6 industry is innovating and responding going forward.

7 THE COURT: I'm sorry. Do you mean that generally or
8 with respect to the health care field in particular?

9 THE WITNESS: Generally.

10 Q. You are not a privacy regulatory specialist, correct?

11 A. I am not.

12 Q. You have never advised a programmatic advertising company
13 on how to respond to new privacy regulations, right?

14 A. I have not.

15 Q. You also discuss changing customer needs in your report, is
16 that correct?

17 A. I do.

18 Q. The customers in HCP programmatic advertising typically are
19 advertising agencies and pharmaceutical companies, correct?

20 A. Correct.

21 Q. You have never been employed by an advertising agency,
22 correct?

23 A. No, I have not.

24 Q. You have never been employed by a pharmaceutical company,
25 correct?

1 A. No, I have not.

2 Q. So when you say that customer needs are evolving, that's
3 not based on any professional experience you have working for
4 one of those customers, correct?

5 A. I probably should clarify here as well. I sit on the
6 leadership council of our cancer drug accelerator at Rice. I
7 teach health care classes in my -- health care cases in my
8 class, and I teach a year-long sequence on health care
9 innovation and entrepreneurship. It is, among other things, my
10 job to make sure that I study and understand what is happening
11 in the pharma industry.

12 So, no, I have not been employed by a pharma company,
13 but that does not mean that I am not able, as a professional
14 scholar, to study what is happening in an industry.

15 Q. I want to turn to your discussion of the defendant's
16 ordinary-course documents in your report. Your report claims
17 that they are outdated and unreliable, is that correct?

18 A. My report, I believe -- why don't we pull it up so that we
19 can be consistent with what I said. But I refer to some of
20 them as being outdated and -- certainly outdated in the sense
21 that many of them come from 2020, 2021, 2022, which, in a
22 rapidly evolving industry, is eons ago and, in some cases,
23 unreliable in the sense that you have to remember to think
24 about the context in which they are created when looking at
25 them, in that sense. I'll save you from loading the report.

1 Q. You would agree that ordinary-course documents have at
2 least some relevance for understanding competition in HCP
3 programmatic advertising, correct?

4 A. Absolutely. The key, as always, with any document in any
5 case is to consider the context in which it is created.

6 Q. Ordinary-course documents can show who a company perceives
7 as its competitors, correct?

8 A. If they are created specifically for the purpose of mapping
9 out the entire competitive landscape, potentially.

10 Q. Ordinary-course documents can show how other competitors
11 influence a company's decision making, correct?

12 A. Potentially.

13 Q. You have not personally reviewed every document used as an
14 exhibit by the FTC in this case, correct?

15 A. I highly doubt so.

16 Q. You are not offering an opinion on the reliability of
17 documents that you have not personally reviewed, is that
18 correct?

19 A. That is correct.

20 Q. Some of the documents you reviewed were authored by
21 DeepIntent's executives, is that correct?

22 A. Yes.

23 Q. DeepIntent's executives are responsible for growing the
24 company's market share, correct?

25 A. Correct.

1 Q. DeepIntent's executives are also responsible for planning
2 for the future, isn't that correct?

3 A. Correct.

4 Q. Some of the documents were also written by salespeople for
5 DeepIntent and IQVIA, correct?

6 A. Correct.

7 Q. Salespeople are responsible for understanding who their
8 competing against, correct?

9 A. Hopefully.

10 Q. Salespeople are responsible for trying to beat other
11 competitors for different opportunities, correct?

12 A. Correct.

13 Q. As part of your work on this matter you never spoke with
14 anyone from either of the defendants, correct?

15 A. That is correct.

16 Q. So you have never spoken with any of the individuals who
17 authored the various documents you reviewed, is that correct?

18 A. I have not. I have read their declarations. I have read
19 their depositions, but, no, I have not spoken to them.

20 Q. Outside of the evidence you reviewed in this matter, you
21 don't have any independent knowledge about competition in HCP
22 programmatic advertising, is that correct?

23 A. That is correct.

24 Q. Would you please turn to the slide in the demonstrative
25 section. I believe it is the second-to-last slide with the

heading PulsePoint testimony.

A. Is it going to come up? Thank you.

Q. Were you in attendance at this hearing during the testimony from PulsePoint's executive vice-president, Konrad Gerszke?

A. I was.

Q. If you look at the excerpt from page 151 of the hearing transcript, Mr. Gerszke testified that the vast majority of PulsePoint's losses are to DeepIntent and Lasso.

Do you see that?

A. I do.

Q. Please turn to the next slide, which has the heading AdTheorent testimony. Let me know when you are there.

A. OK.

Q. Were you in attendance at this hearing during the testimony from AdTheorent's CEO, James Lawson?

A. No, I do not believe I was.

Q. If you look at the second prompt from pages 808 and 809, do you see that Mr. Lawson testified that he's not aware of any new entrants that AdTheorent comes up against other than PulsePoint, DeepIntent, and Lasso?

A. That is what I see here.

Q. Is it your opinion that this evidence is not informative in this particular antitrust case?

A. So I'm offering no opinion on the trial testimony here, but these are small excerpts of a massive, massive record. I'm not

1 arguing -- not opining or speculating that anything is not --
2 sorry. I think it is -- I see where you are showing me some
3 excerpts from a very large amount of evidence in the case. I'm
4 not saying that these aren't relevant, but I will say that
5 everything else is relevant too and that everything needs to be
6 analyzed with an eye towards what the context was in which
7 conversations were happening, documents were created, and what
8 the incentives of the people are.

9 Q. It's the job of these companies to understand the market
10 and predict how it will develop, correct?

11 A. Presumably.

12 MR. SOHN: We have no further questions, your Honor.

13 THE COURT: Can I ask a question. One of the factors
14 that you mentioned in determining whether or not a particular
15 industry is dynamic or changing is technological changes. I
16 note that oftentimes, to my great chagrin, there is
17 technological changes all about my life, all around my life.

18 Is there anything in particular about what you studied
19 in this case that makes the technological changes different?

20 THE WITNESS: Yeah. You're a hundred percent correct,
21 technological change is all over. This is a software business
22 that is highly dependent on data. And our ability to process
23 data, to work with big amounts of data, to optimize data, that
24 has been changing and improving by leaps and bounds over recent
25 years, and with AI it moves forward by leaps and bounds again.

1 This is true for the advertising industry writ large,
2 not just for health care, and it's true for any data-driven
3 industry right now in terms of what the effects of these kinds
4 of technology -- these technological advancements and our
5 ability to work with data really do to the industry and to the
6 competitors and to the innovation and the space.

7 THE COURT: Thank you.

8 Mr. Tulumello.

9 MR. TULUMELLO: Nothing further.

10 THE COURT: Dr. Hochberg, you may step down.

11 (Witness excused)

12 THE COURT: Is there another witness?

13 MS. FIEBIG: We were hoping to present our final
14 witness of today by deposition designation.

15 THE COURT: Very well.

16 MS. FIEBIG: We would call Paul Chachko.

17 I am going to invite one of my colleagues up just to
18 display the demonstrative that you first saw last week.

19 Mr. Chachko is the founder and chief executive officer
20 of a company called Throtle.

21 THE COURT: How do you spell the last name?

22 MS. FIEBIG: It's C-h-a-c-h-k-o.

23 This video will run approximately 22 minutes. I think
24 Mr. Sullivan can indicate where Throtle falls within that
25 demonstrative, and then we can play the video.

1 THE COURT: Very well.

2 MS. FIEBIG: Before we begin, apologies. We will need
3 to seal the courtroom for this portion of the testimony.

4 THE COURT: If you are not part of the litigation
5 teams, please leave the courtroom.

6 MS. FIEBIG: Thank you.

7 PAUL CHACHKO, by video.

8 (Video played).

9 THE COURT: That concludes Mr. Chachko's testimony?

10 MS. FIEBIG: Yes, your Honor.

11 THE COURT: We have no other witnesses today?

12 MS. FIEBIG: That's right, your Honor.

13 THE COURT: Is there anything that any side wish to
14 raise?

15 MS. FLEURY: Not from the FTC, your Honor.

16 MS. FIEBIG: Nothing further today, your Honor. Thank
17 you.

18 THE COURT: In that event, we are adjourned. Have a
19 good night, everyone. See you tomorrow.

20 You can go about your business.

21 (Adjourned to November 30, 2023, at 9:00 a.m.)
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23
24
25

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